

REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 2061

A BILL TO AUTHORIZE APPROPRIATIONS TO CARRY
OUT THE MAGNUSON FISHERY CONSERVATION AND
MANAGEMENT ACT THROUGH FISCAL YEAR 1992

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REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

TUESDAY, MAY 2, 1989

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES
AND WILDLIFE CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m., in Room 1334, Longworth House Office Building, the Hon. Gerry E. Studds (chairman of the subcommittee) presiding.

Members present: Representatives Studds, Hutto, Bosco, Tallon, Pallone, Unsoeld, Young, Schneider, Miller, Saiki, and Herger.

Staff present: Jeffrey Pike, Bill Woodward, Joyce Sacco, Lisa Murray, Su Sponaugle, Rod Moore, Tom Melius, and Sue Waldron.

Mr. STUDDS. The Committee will come to order.

I think everybody knows the subject that brings us here. It is important, it is complex, we have a great many witnesses, and not much time, and in what I think is an unprecedented demonstration of forbearance we are going to forego opening statements, although I understand one Member finds it a little difficult to forego that in its entirety. I will forego it. I gather most Members are willing to.

[The statement of Mr. Studds follows:]

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

The Subcommittee meets this morning to receive testimony on H.R. 2061, a bill to reauthorize the Magnuson Fishery Conservation Act at approximately current levels of funding for the next three years. As Members, know, this historic statute was enacted in 1976 to conserve and manage our fishery resources. By establishing America's rightful claim to American fisheries, it has pumped billions of dollars into our economy, created tens of thousands of jobs and helped make America's fishing industry among the most modern and productive in the world.

Today, and in field hearings that will begin in Boston next week, the Subcommittee will consider whether the policies and practices that have carried us through the first decade of the 200-mile limit will be enough to carry us through the second.

The answer to that question is certain to vary from region to region and fishery to fishery. The floundering groundfish stocks in the North Atlantic are of enormous and growing concern to those of us from New England. The management of North Pacific fisheries is being compromised by foreign driftnet operations on the high seas. The exclusion of tuna from the Act remains controversial and will be examined by the Subcommittee in a separate hearing this summer.

But today, we will try to focus as much as possible on the broader, national issues that concern us all: the operation of the Council system; the development and enforcement of management plans; money; and the extent to which statutory changes

may be needed to ensure that the conservation goals which are central to the effectiveness of the law are met.

The witnesses we will hear from today, although no substitute for the working fishermen we will hear from in the future, possess a wealth of expertise. With their help, I trust we will proceed rapidly and informally to begin a process that will produce a good bill for House consideration early this fall.

Mr. STUDDS. The gentleman from Florida apparently has something that has to be said. The gentleman is recognized.

**STATEMENT OF HON. EARL HUTTO, A U.S. REPRESENTATIVE
FROM FLORIDA**

Mr. HUTTO. Well, Mr. Chairman, thank you, and I will be very brief. I appreciate your holding this hearing. I have received numerous complaints from my district with regard to the current system of regional fishery management councils. I have been told that the different fishing and conservation interests are unevenly balanced in the membership of the Gulf of Mexico fishery management council. In addition, a reef fish fishery management plan currently before the Gulf fishery management council has created an uprising among the fishermen of my district. The regional outcry concerning this reef fish proposal has brought to light additional problems for the council's public input system. So, I believe this hearing is an important step in solving the problems within our current fishery management councils, and working toward a more effective system of managing our Nation's vital fishery resources, and that is it, Mr. Chairman.

Mr. STUDDS. I thank the gentleman. All Members' opening statements, those who have them—I assume they are available for the press—and they will appear in their entirety in the record, without objection.

[The statements of Mr. Young and Mr. Miller follow:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, as you indicated, this is the first in a number of hearings that this Subcommittee will hold this year on issues affecting the conservation and management of our Nation's fisheries. I look forward to working with you as we go through this process.

When you and I worked on the original 200 mile legislation in the early 1970's, our fishermen were concerned about foreign fleets depleting the resources off our shores. Now, 13 years after our bill was passed and signed into law, there is practically no foreign fishing left, and very little foreign processing. That's the good news.

The bad news is that we now have American fishermen arguing with each other about who gets what. Now, I believe in healthy competition—that's the American way. However, I think we should be cautious as we examine amendments to the FCMA this year. We need to make sure that any changes we make provide for proper conservation and management. We need to make sure that we give the fisheries managers the tools to properly manage, and not try to do it ourselves. The worst thing that could happen to the U.S. fishing industry would be to put fisheries management in the hands of the U.S. Congress. Therefore, we need to give the Councils and the States the support they need to carry on the excellent work they have been doing.

We also need to spend time looking at the last unregulated foreign fishery that affects our resources. There is growing evidence that the high seas driftnet fleets continue to destroy our salmon and steelhead stocks, as well as thousands of birds and mammals. Last week, an additional 27 indictments were returned in Seattle against a group of individuals who have been purchasing illegally caught salmon, laundering it through this country, and smuggling it to Japan. Although this interception occurs on the high seas, it affects our resources and we need to look at the Act to see if we can strengthen it and help get a grip on this problem.

Having said all of that, I know that there will be some issues specific to our various districts that Members will want to discuss. For example, I know of one situation in Alaska where a certain fish processor is trying to shirk its tax obligations that I may bring to people's attention at a later date. However, these sorts of things should be covered in the field hearings that you have ambitiously agreed to. I know you are looking forward to the hearing in Alaska as much as I am looking forward to the hearing in Boston next week.

In closing, I want to join you in welcoming the witnesses here today and, again, I anticipate a good set of hearings this year and a good bill. Thank you.

STATEMENT OF HON. JOHN R. MILLER, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. Chairman, thank you for holding this hearing on reauthorization of the Magnuson Fishery Conservation and Management Act.

Often, we start a hearing like this by complaining that the law isn't working very properly. Well, Mr. Chairman, the Magnuson Act is working very well. Mr. Chairman, as you know, the Magnuson Act created our 200 mile fishing zone in the hope that U.S. fishermen, processors and marketers would take control over the vast fishery resources in our exclusive economic zone. Many people thought this notion was foolish. Today, Mr. Chairman, we know today that those skeptics were wrong!

Mr. Chairman, I am proud to tell this Committee that I represent the state that leads the Nation in catching food fish. The fishermen from Washington state catch 60 percent of the food fish caught by American fishermen. My constituents catch, process and market every species from high valued salmon, crab, and halibut to once ignored species like pollock and other bottom fish. The growth of the fishing industry in Washington state has exceeded even optimistic forecasts of a few years ago. over 36,000 Washingtonians are employed in the fishing industry and they contribute over \$3 billion to my state's—and our Nation's—economy.

The Magnuson Act has worked. Today, because of its success, it needs some fine-tuning. I am concerned about the threat of boom and bust cycles in the industry. I am concerned about the ability of the regional management councils to manage fisheries in an era when there are few foreign ships with observers to gather data. We need to find a way to get reliable data in a timely fashion. I am concerned about parochial interests in one state trying to disadvantage U.S. citizens from another state working in a Federal fishery zone. And, Mr. Chairman, I am very concerned about environmental threats to our fishing industry caused by oil spills and high seas pirates who steal our fish.

Mr. Chairman, I know we will explore these and other issues in this and future hearings. I look forward to working with you, Congressman Young and the rest of the Committee in developing a good bill.

Thank you.

Mr. STUDDS. We go first to panel number one. Let me just say, for your benefit, and that of all the other witnesses, that we have an unusual number of witnesses, we have their statements, and, without exception, they have contributions to make. The House is going into session at noon. Everything, as usual, is happening at once around here, and we are going to do our very best to give everybody an opportunity to give an oral summary of what they have to say.

We will try to impose uncustomary discipline upon ourselves. We are going to ask the members of the first panel to confine their oral statements to no more than five minutes. Their written statements will appear, in full, in the record.

We will begin with Mr. James Brennan, Assistant Administrator for Fisheries of NOAA, who no doubt has come back, as we requested him last time, with the definition of "flexible freeze." Mr. Brennan.

STATEMENTS OF A PANEL, CONSISTING OF MR. JAMES BRENNAN, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; AMBASSADOR EDWARD E. WOLFE, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE; AND REAR ADMIRAL TED LELAND, CHIEF OF THE OFFICE OF LAW ENFORCEMENT AND DEFENSE OPERATIONS, U.S. COAST GUARD

Mr. BRENNAN. Mr. Chairman, I do have that definition. I have consulted with the Department of Commerce General Counsel, and believe that your staff has received the correspondence that we obtained from the Department. So that mystery is now fully cleared up for all of us.

I will try to be very brief, Mr. Chairman. The bill we are discussing today is H.R. 2061, which is a simple three-year reauthorization of the Magnuson Act. The Administration favors, of course, reauthorization of the Act; however, it does not agree with the funding levels provided in the bill.

The Administration supports a funding level of \$55.9 million for FY 1990 as opposed to the bill's \$75 million for FY 1990.

We will be submitting a bill for the Administration, which will contain several additional provisions which we think will enhance the operation of the Magnuson Act, streamline its procedures, and make it even more effective.

Let me just say a few things on what has happened over the past decade plus 3 years in the Magnuson Act. The Magnuson Act, when enacted, was really a strong departure, and, in many ways, an innovation, and some people had doubts about its efficacy.

It turns out, in retrospect, that it was a real stroke of genius on the part of the Congress to adopt a law which provided for regulation of the fisheries by the fishermen, active participation by all concerned, and to have the decisional process focused in the region and at the State level.

We have made some real accomplishments in the past 13 years as a result of the cooperation of the Fishery Management Councils, the States, the Federal Government, Coast Guard, State Department, and NOAA, working in coordination.

Fishery landings by U.S. fishermen have doubled to 5 million tons since the law was passed. Foreign fishing has decreased from 1.8 million tons in our exclusive economic zone to about 62,000 metric tons last year. This has really been an unprecedented development of the domestic fishery.

The technology has been increasing as fishermen have seen the opportunities and have grasped them. JVs, for example, in 1988, harvested 1.5 million metric tons, giving domestic fishermen \$214 million for over-the-side sales. And the fact is that the high point of JVs is over. More and more, we are seeing purely domestic operations, just the way Congress had intended.

We have also seen that we have peaked with respect to our balance of trade problems in the fishery products. Last year, we exported \$2.2 billion worth of fishery products, and, for the first time in the past 20 years, we have seen a decrease in the year-to-year trade deficit.

We are now facing, as we go into the second phase—as I would call it—of the Magnuson Act, the Americanization phase, certain unique problems which will have to be addressed, and those problems, simply stated, are overfishing, overcapitalization, and allocation of resources between recreational and commercial fishermen and among gear types. These all are very sensitive problems. They are problems that have much more poignancy now because we are dealing with Americans versus Americans, and they all have a claim in equity on these resources.

We have been hampered by funding, the lack of stable funding. The Administration has been attempting to identify alternative funding mechanisms, and we believe that there is growing support for a new approach in the fisheries community to some type of funding whereby the people benefiting from the use of the resource will pay for the use of that resource.

Let me just briefly mention, Mr. Chairman, some of the amendments that we think are particularly appropriate, and we hope that this Committee would consider carefully when the Administration bill comes up here next week.

Our bill would propose to allow us to set domestic fee levels at a level above administrative costs. The theory here, again, is those who use the resources should pay for it to some extent.

Currently, we are limited in the fees that we charge domestic fishermen to the administrative cost of issuing a license or permit, and we believe that that cap should be taken off.

We believe also that we should provide greater protection to observers on domestic fishing boats. We are recognizing that we will have to put more observers on domestic vessels. Enforcement officers are protected by a provision in the law that makes it a criminal offense to assault an officer. We believe that observers should receive the same protection.

We believe also, that we should now go to a system of foreign fees which allows the Secretary of Commerce to charge reasonable fees for foreign fishing allocations, Mr. Chairman. Again, because we now have a very small foreign fishery, strict application of the requirements of the Magnuson Act may in fact result in fees that are many times over the ex-vessel value of the fish, and we believe it would be more appropriate to allow us to more or less set fees at a market level, or what the traffic would bear.

I think those are the major issues that are in our reauthorization proposal. There are other elements to it that are covered in my prepared testimony, and I would be pleased to go over those if you wish, but I think, in trying to stay within your time limit, that is all I have at this time.

[The statement of Mr. Brennan can be found at end of hearing.]

Mr. STUDDS. Thank you, sir. Next, for five minutes, Ambassador Ed Wolfe, Department of State. Ed, welcome back.

STATEMENT OF AMBASSADOR WOLFE

Ambassador WOLFE. Thank you, Mr. Chairman. I have 17 pages and I will get it down—

Mr. STUDDS. That should be easy.

Ambassador WOLFE. I will do my best to get it down to five minutes, and be ready to answer questions, if you should have any.

Let me say, at the outset, that from the perspective of the Department of State, the Act, and its implementation, in our opinion has been a noteworthy success. We have no changes to recommend to the Act.

We are all aware of the fundamental purposes of the Act, so I will not go through that part of my testimony. I will just say that our principal role at the State Department has been—in the process established by the Act, in order to achieve these purposes—to negotiate the Governing International Fisheries Agreements (GIFAs), and also to allocate surplus American fishery resources to fishermen from countries with which we have GIFAs in force.

The principal fisheries policy which the U.S. has pursued since 1980 has been known as the "Americanization" of fisheries in our U.S. economic zone. During the decade of the 1980's, direct allocations to foreign countries have fallen from a high in 1980 of over 2 million metric tons, on both coasts, to around 51,000 metric tons thus far in 1989.

To send a diplomatic signal to foreign countries fishing in our zone that U.S. law was changing, or the U.S. was changing its approach with regard to bilateral fisheries arrangements, we began, several years ago, to extend certain agreements for only a 2-year period. We have not renegotiated a GIFA for several years.

Our approach has been to offer each GIFA nation the choice of either accepting a 2-year extension of their existing agreement or to do nothing at all, (i.e. just to allow their agreements to expire).

During the 1980's, the number of GIFAs in force has been reduced from 17 to nine, and that includes the comprehensive bilateral agreement with the Soviet Union.

From an international perspective the problems that the MFMCA intended to address when it was written over a decade ago, for the most part, in our opinion, have been resolved. That is, the U.S. is now fully controlling the fisheries off our coasts.

In fact, for all practical purposes, foreign fishing in our zone has been eliminated. One might say, in a sense, a chapter in U.S. fisheries relations with countries which traditionally fished off our coasts has been closed. We are now pursuing new and innovative methods of doing business with our foreign fishing partners. I have examples in my statement that I would like to be included in the record of these equity joint venture types of new and other innovative ways of doing business with foreign countries.

As one chapter of our international fisheries relations has come to a close, other international areas are requiring more of our attention. We have more important responsibilities in international fisheries matters other than allocation of surplus resources to GIFA countries. Three broad areas of international fisheries interests come to mind.

The first area involves the question of how to deal with fisheries stocks which are partly in the U.S. zone, partly in either of the zones of neighboring countries, or on the high seas beyond the 200-mile zones of any nation.

For example, one of the main issues we face in the North Pacific is the dramatically increased level of fishing by third countries in the Bering Sea, the so-called "doughnut area."

In this region fishing vessels from Japan, Korea, Poland and China have concentrated their efforts, and increased harvest of pollock from some 100,000 metric tons in 1984 to over 1 million metric tons in 1988. This is totally unacceptable.

According to our scientists, this dramatic increase in fishing is adversely affecting economically vital U.S. pollock stocks as well as other stocks in the Bering Sea. We are currently working with the Soviet Union, the other Bering Sea coastal State, to develop measures for addressing the unregulated fisheries in this so-called "doughnut area."

Talks with the Soviet Union on mutual fishery concerns will resume in late June. In addition to the "doughnut issue" which I mentioned earlier, the two sides will also discuss measures to conserve salmon on the high seas.

Under a Memorandum of Understanding signed February 9th with the Soviet Union, both countries have agreed to the principle that high-seas salmon fishing is a wasteful practice and should be eliminated. We also agreed to increase bilateral cooperation on high-seas salmon enforcement.

During our next meeting in Moscow, we will be discussing possible long-term regimes for the conservation of salmon throughout the North Pacific. We also face a major conservation problem in the form of the large squid and tuna driftnet fleets from Japan, Korea and Taiwan operating throughout the North Pacific.

This type of wasteful indiscriminate fishery takes large quantities of marine mammals, sea birds, and other non-target living marine resources. In addition, if the fisheries operate in certain northern areas, they will inevitably intercept valuable U.S.-origin salmon.

There is, in fact, evidence that squid driftnet vessels from Taiwan and possibly other countries are involved in illegal directed salmon fishing. Pursuant to your 1987 Driftnet Act, we have been involved in talks with Japan, Korea, and Taiwan, with the aim of reaching adequate agreements for monitoring and enforcement of these driftnet fleets.

Progress has been slow in some instances and practically non-existent in others. We face resistance on the grounds that fisheries on the high seas should be controlled only by the flag States. I will not go into any more detail on that subject, but you are aware, if adequate agreements are not reached by June 29, the Driftnet Act requires the Secretary of Commerce to certify to the President under the Pelly Amendment and then we would be looking at possible trade sanctions.

On a more positive note, turning to the matter of neighboring countries, one positive approach to our bilateral fisheries relations is a recently concluded Comprehensive Fisheries Agreement with the Soviet Union which covers all aspects of our bilateral fisheries relationship.

The Agreement provides for access to each other's waters on a reciprocal basis, and for cooperation on fisheries issues of mutual interest. This landmark agreement, which was a product of 8 years

of talks, provides U.S. fishermen, for the first time, access to the Soviet zone.

Because of ongoing economic restructuring efforts in the USSR, our embassy in Moscow informs us there is strong Soviet interest in establishing joint enterprises with foreign countries, especially in the field of fisheries.

Several U.S. companies are now in the process of finalizing these joint ventures, and I understand that possibly one has already been finalized.

The idea of reciprocal fishing arrangements may not be appropriate in other cases involving U.S. fisheries relations with neighboring countries. I know this is of specific interest to you, Mr. Chairman, because we have talked about it quite a few times before.

On the U.S. side, there is no domestic consensus that the U.S. and Canada should have a more formal fisheries relationship involving reciprocal fishing rights or joint management efforts.

As we know from past experience, unless such a domestic consensus exists, it is futile for the Government to proceed. At the same time, we recognize the need for close cooperation with Canada on fisheries matters since, in some instances, both countries are managing the same stocks of fish, and historically, our overall fisheries trade and industry relation has been a very close one.

Our approach has been to enhance U.S.-Canadian communications on fisheries matters, and to find as much common ground as possible on fisheries issues of mutual interest. I have examples in my testimony, Mr. Chairman. The Canadian minimum size restrictions; joint enforcement cooperation between our two countries. We are looking at a jointly sponsored scientific-basis conference with the Canadians in the near future.

Our approach to our fisheries relationship with Canada has been to proceed cautiously, and to pursue, on a step by step basis, somewhat limited, and hopefully achievable goals, consulting, obviously, with Congress and the industry as we proceed.

In an effort to enhance such cooperation, we have proposed that the two Governments meet in the near future to exchange views on a variety of fisheries matters. We also have important fisheries relationships with other countries, Mexico being one. I will not go into detail; as my complete testimony for the record provides such particulars.

A second broad international fisheries area which is the responsibility of our Department involves the conservation and management of anadromous U.S. fisheries resources beyond our 200-mile zone. Such conservation and management is, in my opinion, one of the more important purposes of the Magnuson Act.

It seems clear that a cooperative international effort is mandatory if we are to effectively do the job required of us under the Magnuson Act. As I noted earlier, the driftnet negotiations with Japan, Korea, and Taiwan represent one of our major efforts to address this salmon management issue. I would be less than candid if I told you that all of the countries have been cooperative in this regard.

The third and last broad area of international fisheries cooperation that we attempt to work with other countries on is the responsibility of the so-called distant water fleets. I will address tuna very briefly. Obviously we have a great interest in shrimp, but tuna, to

a large extent, has been a focal point for the U.S. to encourage international fisheries agreements.

You are aware of the agreement that was negotiated recently, in force in the South Pacific with 16 island countries, providing access to the U.S. tuna purse seining fleet of over 10 million square miles of ocean.

In closing, Mr. Chairman, let me reiterate that we believe, in terms of international fisheries matters, as they relate to the Magnuson Act, that we have successfully achieved the intent of the Act, and the "Americanization" of the U.S. exclusive economic zone. A chapter has been closed. The new chapter is evolving which will require international cooperation, albeit differently, to continue to advance U.S. fisheries' interests. Thank you, sir.

[The statement of Ambassador Wolfe can be found at end of hearing.]

Mr. STUDDS. Thank you. Before we go on, let me just observe: those of you who are unable to find seats, you are more than welcome to come and sit down around the table here. As I have said before, nobody will accuse you of being Members of Congress. Please feel free to do that, especially those of you who have to take notes. It might make life a little bit easier.

We will go next to Admiral Leland. Admiral, is it safe to assume that in the event that you are to wend your way up the ranks, and some day become Commandant, that beards will come back to the Coast Guard?

Admiral LELAND. It is something to be hoped for, sir. I doubt it, seriously. Once it is gone, it is gone.

[Laughter.]

Mr. STUDDS. I do not want to jeopardize your—there is some ancient and venerable and salty precedent, as you know.

Admiral LELAND. Yes, sir. I used to wear one, as you remember.

Mr. STUDDS. I do know that. You are recognized for, max, five minutes.

STATEMENT OF ADMIRAL LELAND

Admiral LELAND. Thank you, sir. I apologize for the lateness of the submission of my testimony. I will do better, if I am ever allowed to do this again, but I do sympathize with H.G. Wells, who said that probably no passion is as great as that of changing another man's draft.

I will submit the statement for the record and speak to what I am supposed to know best as Chief of Law Enforcement and Defense Operations in the Coast Guard.

Successful law enforcement depends upon three things. First of all, the quality of the laws and the regulations which we have to enforce; secondly, the enforcer's capabilities; and thirdly, the prosecution of the offenders.

The Act is fundamentally fine, it is not perfect, but it certainly set out to do what it initially did, and it Americanized the industry. The regulations under the Act appear to be deficient. We do not seem to be managing the resource.

There are 28 management plans which we help National Marine Fisheries Service, or fisheries now in force, and enforcement has

not been a major concern. There are some generic flaws. The enforcement capabilities bear comment. There are 230,700 fishermen nationwide, 10,000 in New England according to my sources, 5000 shrimpers in the Southeast and the Gulf, and the trend is growing.

The Coast Guard. Well, we have an authorized strength of 38,500. We can afford to pay 37,500. The NOAA inspectors are about a 100, and so I would say that while the population of the fishermen are growing the enforcers population remains about the same.

So we have a growing population, we have perhaps some deficient regulations, and we therefore have questionable enforcement.

The Commandant has directed that we will increase our fisheries enforcement, and we have in fact responded to that challenge. I received a note from an outraged J.G., and as an Admiral, to get a chewing out from a J.G. in New England. He wanted to emphasize that we are in fact doing more. In fiscal year 1988 we boarded 1500 vessels off New England. To date, we have boarded 1506. So we are improving.

This is increasing an already high tempo of operation, but we are working harder and not necessarily smarter.

Prosecution is the third element, and the answer to the question, what happened to Joe after the Coast Guard or NMFS caught him is extremely important. The FCMA is a noble enterprise, but as I tell my staff, a noble enterprise generally consists of six stages. There is enthusiasm followed by confusion.

Then there is disillusionment. Then there is the search for the guilty, punishment of the innocent, and finally, medals for the undeserving.

[Laughter.]

Admiral LELAND. So, in any particular effort, it is important to keep up your enthusiasm, recognizing that lapse into confusion is inevitable. Try to avoid stages three, four and five, but by all means, keep the medals for the undeserving. Thank you, sir.

[The statement of Admiral Leland can be found at end of hearing.]

Mr. STUDDS. Did OMB clear that?

[Laughter.]

Admiral LELAND. The summary? They never clear summaries, sir.

Mr. STUDDS. No. Well, don't throw those cards away. We cannot find that in your written testimony. We cannot find anything in your written testimony.

[Laughter.]

Admiral LELAND. That is all right, sir. I did not see my testimony until this morning, either.

[Laughter.]

Mr. STUDDS. Well, so much for speculation about your career, then. I am quite serious about those cards. I could use those this weekend. If you would save those, we would appreciate that.

I have to begin, I do not know if Members realize, but every time that poor Mr. Brennan has been up here, we have pressed him as if there were some reason that he should know as to what a flexible freeze is, especially when contrasted with a residual freeze, both of

which are apparently crucial components of the new President's program.

And since he did not know, he went back and did what any good soldier should do. He asked the legal authorities within his own department. And lo and behold—I do not know if this has been made available to other Members, but if it has not, I am going to ask that it be. We have an official memorandum from the Acting General Counsel of the Department of Commerce as to precisely what is meant—well, strike that—as to what is meant by a flexible freeze and a residual freeze, accompanied by one, two, three, four—five pages of elaboration from a document known as "Building A Better America." Apparently is the budget.

Anyway, I want to thank you. It is perfectly clear to me. I want to confirm we have the same understanding of this, and then we can get on to questions.

You made a formal request to OMB, and I really appreciate that. Apparently—and make sure we are on the same wave length here—your budget is clearly part of the residual freeze and it will become part of the flexible freeze if Congress and the Administration decide in a bipartisan spirit to give you either more money or less money, while, at the same time, taking or giving the same amount of money to or from some other program, that is also listed in the residual freeze category, and that we decide to treat with equal but opposing flexibility.

Do you agree with that?

Mr. BRENNAN. I agree with that 100 percent.

Mr. STUDDS. Thank you. That is what I thought.

[Laughter.]

Mr. STUDDS. Now I am not sure I understand the term we should use, if we actually find a way to get you more money. Do you think that becomes a residual melt, or some kind of an economic slurpee? It is not clear to us. Does it mean you will be able to get your testimony cleared in the same fiscal year you submit it, do you think? Or we note—this is all staff research, I am sure you know—that Governor Sununu said the other day, that the reason the Administration has not made any news during its first 100 days is that it is operating under a different—and I quote—"political template," unquote.

Now do you think you could ask OMB, or maybe the State Department what that means for our next—

[Laughter.]

Mr. STUDDS. We try very hard to understand here, and you have been the most helpful of all our witnesses in trying to decipher this. So your next assignment, when you next appear, is the key phrase, political template.

Now I have some questions also about enforcement, mostly I think for NMFS, and perhaps also for the Coast Guard. We will ask for more detailed information later, but try to answer directly, if you can.

Is it fair to say that today, for many fisherman, in many parts of the country, it often makes better economic sense to violate certain fisheries management regulations than it does to comply with them? Better economic sense? If you would rather discuss the template, go ahead.

Mr. BRENNAN. I think in some circumstances that may be so; first of all, if the fisherman is going to make a reasoned economic judgment and weigh all these things—and frankly, I do not think most fishermen do that—he would have to calculate the chance of getting caught. He would have to then calculate how long it would take before he was served a NOVA, and how much it would be. He can find that under regulations set out in detail for each fishery management plan. Then how long it would take for the Government to collect.

The sad fact is that if, through vigorous enforcement, he is apprehended, and through a vigorous prosecution we issue a NOVA, and proceed through the judicial proceeding within the Department of Commerce, we have a judgment which we can then turn over to the U.S. Attorney who can collect it as a debt.

The U.S. Attorney, in most districts, has an awful lot to do, and collecting a \$10,000 or \$20,000 debt is not high on his list of priorities. So, if you wish to spin this out for the ultimate, it may take a very long time to recover a fairly small fine, and if the fisherman is making judgments like a rational economic man, he may decide that in fact it is to his advantage to do that.

Most fishermen, however, when caught and fined, generally come in to talk, and pay a lesser penalty than the NOVA. They negotiate it away; it gets it off their back and off our docket.

A lot of these cases are negotiated. I think the fishermen understand they have violated the law, got caught, and pay. Nonetheless, it is a difficult situation because at the end of the process, all you have is a debt owed to the Government.

Mr. STUDDS. I take it that you are not getting into astronomy when you talk about NOVAs. Those are notices of violation?

Mr. BRENNAN. Notices of violation and assessment. Yes.

Mr. STUDDS. OK. Again speaking generally—and I recognize the extent to which it is that—is it fair to say that lack of compliance is sufficiently widespread to undermine significantly the conservation goals of the Act?

Mr. BRENNAN. I think generally that is a question that cannot be answered. I think you would have to go on a fishery by fishery assessment, looking at the type of fishery management plan, how easy it is to enforce, whether it requires at-sea enforcement, and the number of fisherman, and frankly, how hard-pressed they are.

If fishermen are in a fishery where there is overfishing, I think they then tend to be more desperate and cut more corners, and end up frustrating the purpose of the fishery management plan.

When you have a fishery that is severely overfished, it is very difficult to bring it back by regulation.

Mr. STUDDS. Admiral Leland, did you want to respond to that? I cannot read your expression that clearly.

Admiral LELAND. Well, I would be happy to offer some statistics. I do not think we are in danger of creating a criminal class. I think, based on fiscal year 1988 statistics, we boarded about 3200 fishing vessels during fiscal year 1988.

There were about 474 notice of violations that we issued, and another 270 warnings. So you could say that perhaps less than one boarding out of five results in some violation of the Act, or at least

a warning for, and if you look for violations the number is significantly smaller.

The problem of prosecution, which I alluded to earlier and which Mr. Brennan has talked about, in that same fiscal year only 89 of those were awarded a fine, and the average fine was about \$1268, according to our records.

There were 99 dismissals, and 44, or so, reductions, and there are I think still about 240 of these that are outstanding according to our files. So, you know, I do not think that fishermen are necessarily dishonest. They may be driven, in certain instances, to a violation of the rule.

Mr. STUDDS. Well, while you are speaking, are there steps that the management councils can take, in your judgment, that they have not yet generally taken, that would allow you to enforce the Act more efficiently?

For example, are there management plans that, in your judgment, are needlessly complicated or unnecessarily difficult to enforce?

Admiral LELAND. My personal experience of course is I think 10 months, 23 days, and 11 hours, when I was assigned at Governor's Island. I was a representative to the New England Fisheries Management Council, and sometimes to the Mid-Atlantic. I would say there are some generic flaws that should be perhaps corrected, and, again, this is my opinion.

When you construct a management plan, and you are concerned about enforcement, there ought to be a prohibition of—where there is a prohibition of a use of a kind of net you ought not to be allowed to carry one.

I think that just makes a lot of sense. It removes temptation. You ought to avoid conflict between the Federal regulations and the State regulations where they are contiguous and you have joint fisheries, like in Texas.

If you have a closure, you ought to have a closure. That is to say, if it is necessary to transit, as it is from your constituents in Chatham who want to get out to Georges Bank, they keep their nets on deck and stowed away until they are in the appropriate fisheries ground.

And there is something I thought about that, just prior to this hearing. The check-in, check-out procedure for the foreign fisheries worked. At least with them. If some system like that—presuming that we have real-time information, because obviously, the time and distance is a great deal shorter, sailing from Chatham than it is from the Soviet Union. But in any case, some sort of notification might be efficacious. But again, that is something we would still like to kick around a little bit.

Obviously, I think there is a lack of real recordkeeping, and this is a serious concern, as much from scientific data—because I am told the last real good scientific information we had was when the foreign fisheries were over here, and we got access to their records.

In my view, it would be nice to have a requirement for daily fish logs. The saying that comes to mind is, "The wages of sin often go unreported," and this might be a way in which to stop that. I think that would cover some of the generic flaws.

Mr. STUDDS. I guess for Mr. Brennan, and possibly the Coast Guard. Of the following options, which do you believe has the best chance, if any, of improving compliance: higher civil penalties, increased seizures of vessels or catches, or increased suspensions of the right to fish? Or none of the above?

Mr. BRENNAN. I think a combination of all three of them. Let me explain that. We are limited, now, to a penalty of \$25,000, and the Administration is proposing to increase that to \$100,000 for a violation.

Now that may be useful in cases where it is a first violation. But a large violation wherein the fisherman has sold the fish, the arrest is no longer available to us, and the only thing left is to either seize the vessel or give an increased penalty. I think in that case an increased penalty may be appropriate.

Where we have repeated violations by the same fisherman, who shows a contempt for the regulations, in an open and notorious way, then I think seizure of the vessel and confiscation of the vessel may be an appropriate measure, although that is a very tough thing to do. We may find, for example, that we have guaranteed a loan on that vessel and therefore he will default on it, and the Federal Government will end up sustaining a loss on that, too.

The other provision of lifting a fisherman's license to fish is probably an intermediate sanction, and that is something that would be useful in appropriate cases, again, where there is more than one violation.

If the fisherman then continues to go out and fish despite the fact that he has no license, then perhaps the next step should be the vessel seizure. So I would put them as three prongs to the offensive fork, and they should be used appropriately, depending on the circumstances, but I think all three are needed.

Mr. STUDDS. One quick question for Ambassador Wolfe before I turn it over to the gentleman from Alaska.

You said that we needed to ensure that the different approaches to fisheries management used in the Canadian and U.S. systems do not conflict or counteract each other. I am interested in how you think we can do that.

For example, we know that Canada harvests small-size cod and haddock from Georges Bank, and that, in turn, undermines our own management efforts. How do we resolve that conflict? Do you have some ideas? Should we join NAFO? What should we do?

Ambassador WOLFE. Well, we have talked about this before, Mr. Chairman. I will try to be very brief. I do have some ideas, which I believe we could sit down and talk about at a later date, so I will not take the Committee's time up today.

You know, as well as I do, that there are differences within our own industry as to whether we should join NAFO. Our fisheries relationship with Canada is a priority of my office.

You recall that I went to Ottawa to meet with the Government of Canada. They did not seem to be interested at that time, 2 years ago, in any type of treaty or agreement type of relationship. In answer to your question about joining NAFO, I think there is a lot of internal discord within NAFO right now. We met with our own fishermen on the East Coast—in fact some of your staff went with

me to four States in New England, and there was no consensus to join NAFO at that time because of the quota problem.

What I do want to point out—and I think it is very important—is that we have to continue talking, and I will propose and suggest to you and to other Members of the Subcommittee that maybe we should formalize or memorialize some type of MOU with Canada. Possibly at this next meeting—an MOU that might concern stocks, and trade, and investigate ways we can better cooperate together.

The Canadians are managing their stocks; we are managing our stocks. Now that is not to say we could not do this together in the future. Right now, it is my understanding from the industry in New England, and most of the people that I talked to, that there is not a general consensus to move forward in that regard. But that should not stop us from moving forward on a foreign policy bilateral front to work together with the Canadians on all of the issues of mutual concern.

Mr. STUDDS. The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman. In deference to Mr. Miller, who has been sitting here longer than I have, I will let him go ahead of me.

Mr. STUDDS. The gentleman from Washington.

Mr. MILLER. Thank you, Mr. Young. Ambassador Wolfe made reference to the challenges of the driftnet fisheries operated by some other nations in the Pacific, primarily one of them being squid, and the thousands of miles of driftnets, and what those driftnets come up with other than squid. Of course along with the mammals and the sea birds, there is the suspicion that they come up with salmon.

In the last several weeks, it seems like every other day out in the Pacific Northwest, we have read or heard of the Coast Guard pursuing a different Taiwanese fishing boat. So I guess I should start off by asking the Admiral, are there any chases underway today, and second, the chases that have been completed, what evidence has been found at this point?

Admiral LELAND. Mr. Miller, there are no chases of which I am aware today. The boarding that included the operations of April 17th through the 19th revealed no conclusive evidence that salmon was ever collected.

As you probably were briefed, when the vessel was stopped, it did not even have logs covering its activity during this particular time. There was some fish scale of, I gather an indeterminate species, that was lying about, but there was no conclusive evidence which we could take or recommend any further action.

Mr. MILLER. And that fish scale was analyzed and did not present conclusive evidence?

Admiral LELAND. Not sufficient to do anything further with.

Mr. MILLER. Well, now, these boardings always seem to take place after several days. The ship is sighted, and then are days of negotiation between our Government and the Office of Taiwan, and then 100s and 100s of miles from the driftnets the ships are boarded and nothing is found.

Turning to Ambassador Wolfe, I know you worked very hard to get the agreements to board those ships, and so I certainly praise you for those efforts, but out of those efforts, has any agreement or sign of an agreement emerged between the Republic of China and

the United States, that would allow for such boardings without going through days of negotiations while a chase is going on?

Ambassador WOLFE. I would point out, Mr. Miller, that many people worked hard, particularly the Coast Guard, during that four- or five-day period. With regard to the consensual boarding on the high seas of the vessel in question, as you are aware, Mr. Miller, on the high seas we are limited by international law to flag-state enforcement, and we are not able to do anything beyond that, at this point. We would not want to prejudice our international rights—the U.S.—in other parts of the world.

As a result of this specific incident, or these incidents, I should say, we delivered a diplomatic—not diplomatic, let me be careful with my words—we delivered a very strong presentation through the American Institute in Taiwan, to Taiwan, Friday, regarding this incident, including lack of Taiwanese cooperation on driftnet monitoring, specifically the enforcement aspects of the agreement. We raised this issue to the highest level, reference Secretary Baker's interest in this particular issue and the possibility of serious bilateral foreign policy problems, including trade problems, if we did not reach agreement.

Mr. MILLER. Have there been any responses that indicate that the Government of Taiwan, with which we have a long history of friendly relations, is going to do anything to monitor or control, or stop what we believe is illegal fishing?

Ambassador WOLFE. To date, there has been very little, if any, progress with regard to the Driftnet Monitoring Act. I should point out that it is difficult with regard to the boarding aspect, putting aside the time it takes to get out a vessel, in that we do not recognize Taiwan as a state, but we do have official relations with the people of Taiwan. Moreover, the Taiwan Relations Act specifies that Taiwan is to be treated as if it were a state under a U.S. statute such as the Magnuson Act.

In that regard, as directed by pay grades much higher than mine in the State Department, I am chairing, for the second time this week, an interagency group of all of the agencies involved, reviewing our high-seas boarding policy.

Mr. MILLER. You referred to the negotiations leading up to June 29th. This is all part of that, right?

Ambassador WOLFE. Correct.

Mr. MILLER. And you said there is a chance of countries not being certified come June—

Ambassador WOLFE. I believe I said—I think there is a very good chance of a country or countries being certified. In addition, I think there is a chance that recommendations may be made for sanctions.

Mr. MILLER. That is what I meant. A chance of being certified.

Ambassador WOLFE. A lot depends on what comes out of the Japanese negotiations, and I have a report that I could provide for the record today, as of this morning. Talks with Taiwan will resume within the next two weeks. For Korea, I have no report.

Mr. MILLER. And so if there is a certification, your Department is considering a recommendation of an import sanction?

Ambassador WOLFE. Well, that would not be my department. If the Department of Commerce certifies—if the Secretary of Com-

merce certifies to the President that no agreement was reached with any of these countries, then we would have a 60-day period, through an interagency process, to make recommendations to the President for sanctions of some products, or no sanctions.

Mr. MILLER. Do I have time for one more question? Well, this was for Mr. Brennan. Bycatch and the 12 fisheries, a matter of controversy, as you know, among affected industry groups and fisheries managers. How would you like to see that issue resolved, and do you think that amending the Magnuson Act in that regard is necessary or desirable?

Mr. BRENNAN. Well, I would like to see that issue resolved in the way that I would like to see all issues resolved under the Magnuson Act, and that is to have the council and the industries that are involved work out a solution that is acceptable to everyone.

I think this is a very difficult, very sensitive issue. We are talking about, on the one hand, some very important and developing trawl fisheries, but, on the other hand, we are talking about some very valuable crab resources that are depended upon by a great many fishermen. The Council has wrestled with this, and we are continuing to wrestle with this, and I think we have gotten, at least initially, through our emergency regulation, an appropriate resolution which involved closing fishing grounds.

I think that the last chapter has not yet been written yet in that issue, and I understand it is very sensitive. I am sure the Council and everyone in the industry understands the importance of it, and I understand that the industry people involved have been communicating with each other.

They have had one meeting, and will be having a second, and I hope that there will be a coming together so that the Council can come up with a solution that resolves it in a way that is fair to everyone, and is seen to be fair to everyone.

Mr. MILLER. Thank you, Mr. Chairman, and Mr. Young, for your patience. I just want to add one last comment to the Admiral and the Ambassador, who have been working on the fish piracy issue. The frustrations in my part of the country, on the part of fishermen from my district, grow daily over what they see as plain and simple fish piracy.

And I hope that as we go up to June 29th, and if necessary, the 30 and 60 days beyond that, that you will keep those frustrations in mind because I think those are not irrational frustrations. So many of our fishermen from Washington State have seen evidence on the high seas fishing boats from other nations taking salmon, and other fish.

Thank you, Mr. Chairman.

Mr. STUDDS. The gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman. Mr. Brennan, when I talk to some of the commercial fishermen from New Jersey many of them say they feel that in some ways they are paying a disproportionate cost of the management plans.

And yet, when I listened to your testimony it seems that all I keep hearing about are more user fees, whether they be for commercial fish sales, over and above the costs of administration, and fees to be imposed by the regional councils.

The comment I constantly hear is that things are already out of hand, and yet the proposals that I hear you putting forth today mean more fees, larger fees in all these different areas.

I am just trying to get a handle on what we are talking about. First of all, there is a concern that part of the budget negotiations now are going to include user fees, and that the fee on fish sales, as well as a salt-water license are an important part of that.

Can you comment on that at all? I know you did before.

Mr. BRENNAN. Yes. We will be submitting a bill, which has the approval of the President, for a user fee in the exclusive economic zone. Our bill is composed of two parts. One is a fee applicable to all fishermen and the other is a levy based on the amount of, or value of the fish harvested in the exclusive economic zone.

Mr. Young has introduced another bill which takes a slightly different approach. My personal feeling, in terms of the flexibility that we have talked about in the past, is that we should look at both bills very carefully and see if we can develop a response that adequately addresses the needs in a way that is appropriate.

Mr. Young's bill allows the fishery management councils to provide for observers through the collection of fees, which is something, frankly, very sorely needed.

Mr. PALLONE. Let me see if I understand. So the first part of the proposal is, in effect, the salt-water fishing license on recreational/commercial users?

Mr. BRENNAN. Yes.

Mr. PALLONE. And the second part is what I call the tax, or whatever, on fish sales?

Mr. BRENNAN. That is correct.

Mr. PALLONE. And that is the 1.75 percent tax?

Mr. BRENNAN. That is correct.

Mr. PALLONE. Now my understanding is that the budget agreement, if you will, has \$14.2 billion in additional revenues, including \$2.7 billion in user fees. Are these user fees part of that 2.7, or do you have knowledge of that?

Mr. BRENNAN. I have no personal knowledge of that, but since the President has approved our submission of the user-fee bill, I assume that they are.

Mr. PALLONE. Let me understand now. You are saying that the regional council proposal is an alternative to that, or an addition to that?

Mr. BRENNAN. No. I am saying that there are three things we are talking about. First, there is the bill introduced by Mr. Young, which instead, is in lieu of our user-fee bill.

In addition, we are suggesting that the provision in the Magnuson Fishery Conservation and Management Act, which allows the charging of fees limited to the cost of processing the fee, be lifted so that a fishery management council could in fact increase a fee proportionate to what it thinks is appropriate for that fishery.

Mr. PALLONE. So, in other words, if we had Mr. Young's proposal passed, we would not necessarily need the salt-water fishing license, or the tax on fish sales? That would be an alternative?

Mr. BRENNAN. I would think that if Mr. Young's bill became law, then that would in fact be the user fee.

Mr. PALLONE. You are saying that right now, with regard to license fees that are approved under the Magnuson Act, they can only be for the administrative costs?

Mr. BRENNAN. Yes, for the cost of issuing the license.

Mr. PALLONE. And this will be an amendment to the Act that would be over and above those administrative costs?

Mr. BRENNAN. The amendment would delete from the Act the provision that limits the fees that could be charged to the cost of administratively issuing the permit.

Mr. PALLONE. So you would be including the costs of what items for that purpose?

Mr. BRENNAN. There would be a fee that would bear some relation to the value of what would be appropriate for that fishery.

Mr. PALLONE. And what types of things would you be charging off?

Mr. BRENNAN. We would not be charging anything off, directly. That would be a fee that would go into the Treasury of the United States.

Mr. PALLONE. And that would be used for general fishery management purposes?

Mr. BRENNAN. Well, that would go into the general receipts of the Treasury and be used as any other receipt.

Mr. PALLONE. I do not know how to say it other than to say I just cannot believe what I am hearing. Every day I get pounded about existing costs. Now we are talking about a salt-water fishing license; we are talking about a tax on fish sales; we are talking about increased administrative fees.

It is just completely out of hand, in my opinion.

Mr. BRENNAN. Well, I believe that when you have a dialogue, you are going to have several views put forward, and I think that is appropriate, and to discuss these achieve the best solution.

Mr. PALLONE. I agree it is important to discuss it, but I want to express my opposition, to say the least.

Mr. BRENNAN. May I just say something for the record. I am not sure what costs the fishermen are talking about, because the costs now are either zero, or very minimal for permits.

Mr. PALLONE. Let me ask another thing. I will ask this of the councils when they come up, but I think it is appropriate to ask you as well at this point.

There is real concern—and I know I have mentioned it before—about the management plans that are submitted, whether or not there is sufficient data and documentation to back up those plans.

The worst example right now, at least from the New Jersey fisherman's perspective, is with regard to bluefish. There is total opposition from everyone I know to the proposed bluefish management plan for recreational users, which I guess has a 10-fish limit, as proposed.

The feeling is that there is no scientific basis for that type of limitation. I have not seen any myself. And of course the same concern was expressed previously about striped bass, because of the belief that basically most of the fish in the northern New Jersey waters are from Hudson River sources, and there has not been documentation to demonstrate that they are not.

Do you have any views as to how the Act could be amended, or whether some mechanism could be put into place to guarantee that these management plans are backed up by sufficient data and proper documentation?

Because the feeling, at least from where I am now, is that they are not documented, and I am just wondering what we could do to make this situation better.

Mr. BRENNAN. Well, I think that is a good question. The law requires that we use the best available scientific information, and sometimes, the best available information is not as precise as we would like to have it.

The councils and the Secretary are faced with a judgment, and the dilemma is this. In the face of uncertainty, is it better to take the most optimistic view of the status of the resource and say, since we cannot prove that you will be devastating the resource by continuing to fish at these levels, we should let you continue to fish without restriction? Or is it better to take the position that since we do not know, and since this is a resource that is renewable and should be here for our children, and their children, we should take a very conservative approach and place restrictions on fishing in the face of uncertainty?

Now it is true that placing restrictions on fishing may in fact make the fishery of today yield less economic results than it could. On the other hand, I personally believe that it is better to act conservatively today, to make sure that the resource is there in the future, than it is to take a view that says, let's do what we can today and let tomorrow worry about itself.

What we need, really, when you come right down to it, is more data, more information, so that we can have that certainty, and the question is—and we get back to what we were talking about a few minutes ago—is where does that money come from.

Mr. PALLONE. I understand your position, and I think you articulated it well. But it seems to me that the status of the current law—and I do not know if that is the way it is written, or if it is the way it is applied—that the presumption, or the burden, is too much in the direction of saying: Well, if we do not have the data, then we will do whatever we can to conserve the resource. We do not really have enough information to back up our position, but we will be conservative, as you say.

I do not know if "conservative" or "liberal" is the right word here, but we will say conservative. I think perhaps there needs to be something written into the law—some way to have more backup for some of these plans, particularly with regard to the bluefish management plan, which I will ask the councils about later.

The general feeling is that there is really no backup, and that the 10-fish limit is being imposed because of the feeling that maybe there are too many fish being thrown around, or rotting here and there, but no scientific basis for saying that there is really a problem with the resource.

And that situation has to be addressed. I do not know how, but, I have to bring it up. Maybe during the course of these hearings we can come up with something.

Mr. BRENNAN. I am sure that the council chairmen who are here, and NOAA fisheries would be pleased to work with you, to

work out something that is appropriate. But frankly, I am not sure offhand, what solution we can find for that, other than becoming more precise with our science, and that means more money.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. STUDDS. The Chair is feeling a little bit guilty since he himself and the first couple of Members spoke considerably more than five minutes, and I am going to extend that philosophical generosity to everybody else, but after this round we are going to have to discipline ourselves or we will be here until the next fiscal year.

The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman. Mr. Brennan, first, let me compliment you on commenting about the council. The gentleman from Massachusetts and myself worked hard on this legislation 13 years ago, and one of the keys to it is the strength of the council. If anything we should be addressing, it is the council's strength, and not trying to solve it through legislative action of this Committee.

I think there is some fine-tuning that has to be done, but if we were start solving everyone's problems through the law here, because the law necessarily does not fit all the different regions. The regions are what are very, very crucial, and I would suggest to the gentleman from New Jersey—I would welcome him joining my observer for enforcement and research bill, because it does give the council the latitude to apply different policies and theories to different regions. It is necessary.

And one of the things we have in our State—and I say this to the lady from Washington—it is our State, and I guess, collectively, our State, as your fishermen are about 60 percent of our fishermen—and we find that our own fishermen have a lack of knowledge, the council has a lack of knowledge, because we have a lack of money. I think it is important that we raise that money.

And I was pleased for you to mention my legislation, because I know the Administration has come down with a proposal that is a straightjacket. It is a user fee, and I will not support that. My bill has a great deal more merit than I am sure the Administration's does, and I am not saying that to Mr. Brennan. I am just saying the Administration should be put on notice about their position, as a straightjacket user-fee position.

Secondly, Mr. Wolfe, U.S. jurisdiction of anadromous species throughout their range on high seas has been recognized by Japan, Korea and Taiwan. However, it seems that this jurisdiction has seldom been enforced. In the view of your department, what changes, or if any changes, in the present law should be made to more strongly assert U.S. jurisdiction in this area?

Ambassador WOLFE. You are correct, Mr. Young, in stating that we do have jurisdiction over anadromous species of U.S. origin. The problem has been, all along—we have that jurisdiction but what do we do with it? Can we board that vessel? Can we seize that vessel? That has been the problem in dealing with this issue.

Our interpretation of international law throughout our U.S. Executive Branch is that on the high seas, flag-state enforcement is the customary international law that we follow.

In specific response to your question, I do not think that the Magnuson Act needs to be amended to more strongly assert our ju-

isdiction over U.S. salmon. I think customary international law requires that we seek cooperation with the flag-state in taking actions beyond our 200-mile limit.

I will say that because of the recent incidents that Mr. Miller referred to—the Taiwan incidents during the past two weeks—I have been directed to chair an interagency group of all of the legal interests in our Government, to review the boarding policy—that is, our present high-seas boarding policy. The review will set the parameters under which the U.S. can take enforcement action on the high seas within the requirements of customary international law.

We are reviewing that whole high-seas boarding policy, and I am hopeful we will come up with something that will be more helpful in the future.

Mr. YOUNG. Would you support a legislative statement of policy that the U.S. Government will take all appropriate action to end high-seas driftnet fishing by a certain date?

Ambassador WOLFE. Two points. The first point, unquestionably, with regard to driftnet fishing of salmon, we all know what the situation is there. There should be no high seas driftnet fishing for salmon. When we get into the other type of driftnet fisheries, such as squid, I personally would, but I am not able to give you an official response.

We are looking, as you know, through the scientific and monitoring aspect of these driftnet agreements, trying to find the information that we need. I think all driftnets are a wasteful and inefficient method of fishing, but I think we need information to answer that question on a solid basis, but not as regards salmon or driftnet fishing.

Mr. YOUNG. Mr. Wolfe, along those lines, you are well aware that I have introduced an amendment, along with the good lady from Washington, on the Pelly Amendment, to give the President the authority to impose sanctions against any member state that participates in high-sea interception.

Has that been discussed at all in any of these meetings that you have had, or are going to have, or will you discuss that at all?

Ambassador WOLFE. It has not been discussed, but I am sure we will discuss it.

Mr. YOUNG. One of my problems, Mr. Wolfe—and for the Members of the Committee is that—with all due respect to the State Department. I think Mr. Wolfe has done an admirable job, as well as those members that preceded him.

But there is a tendency to use fish and chips, and use our fish for chips in a poker game, and I have said all along, that Taiwan is never going to stop high-seas interception until you grab their pocketbook and run with it, because that is the only way you are going to get their attention.

We have no treaty with them, no correspondence with them, and they sell an awful lot of goods to us other than fish. Their fishing economy is a very small part of the total economy in their trade with the United States, and the only time they are ever going to know that this is no longer permissible is when we take their pocketbook and run with it.

And when that happens they are going to stop it. But until that time, in the 200-mile limit—when we were arguing about the 200-

mile limit, everybody said, oh, there will be retaliation, and when we finally passed the 200-mile limit things have changed, we have got an Americanized fleet, we are working with one of the most bright spots of the economy, the Northwest, and yet we have Taiwan setting out there catching our fish, and I just hope this committee remembers this. This bill is going to have hearings, and we are going to pass it, and I hope I can get the President to sign it, and if he does not I hope we override the veto.

Because that is the only time that Taiwan is ever going to listen to us, and not until that time. They will catch as many fish, because it is a gimme. It is gravy. Thank you, Mr. Chairman.

Ambassador WOLFE. Could I just make one quick point, Mr. Chairman, just to follow up on that. Let me reiterate that last Friday we delivered a very strong message to the Taiwanese, not only on the recent incidents on the high seas, but also with regard to their lack of cooperation on the Driftnet Monitoring Act, from the highest levels of the State Department.

And I pointed out during that presentation that not only was this a foreign policy problem, but we were also looking at a very serious trade problem between our two countries.

Mr. YOUNG. I appreciate that, and I just want the State Department to know I back all forceful action they can take. Until you do, Taiwan is going to laugh at you. I have been around them long enough to know that.

Mr. STUDDS. Does the gentlelady from Washington wish to defend her State against the aspersions from the gentleman from Alaska?

Mrs. UNSOELD. Thank you, Mr. Chairman. Ambassador Wolfe, a couple more questions along this line, because in the last couple of years, we have had a terrifying drop in the salmon and steelhead coming back to our coastal waters, so I think we share with Alaska the desire to stem this flood.

Now you indicated that you think we should be seeking cooperation, and in addition to it being Taiwanese, there are also the South Korean and the Japanese driftnet fishing boats.

But why wouldn't you support a change in the Magnuson Act to provide a rebuttable presumption that any salmon found on boat a squid driftnet vessel on the high seas is salmon of U.S. origin?

Ambassador WOLFE. Maybe I could turn the question around. In my opinion, a rebuttable presumption would help in the prosecution of the illegal harvesting methods that have been discussed earlier.

Mr. Brennan's people are now studying the possibility of enacting regulations in lieu of an amendment to the Magnuson Act, as I understand it.

This would obviously put the onus on the vessels caught with the salmon in certain areas. Again, we have got to show the areas, and prove that scientifically, time and place. It would put the burden on the foreign vessels. A rebuttable presumption would facilitate the prosecution of illegal high-seas salmon harvest. We would support that, and have for a number of months.

Mrs. UNSOELD. I recognize that you are in negotiations with now with Japan, and may be reaching some agreement, but what is the status of those negotiations, and is it likely that the Japanese are

actually going to agree to allow U.S. observers on their vessels? U.S. observers as opposed to Japanese observers?

Ambassador WOLFE. Two different issues, one being the scientific observer part of a package with any of the three countries; the other issue being enforcement observers, to board the vessels, in order to determine exactly what was going on. So two different types of observers.

Specifically, in response to your first question about Japan, the most recent report that I received this morning from our people in Japan, is that it appears likely that they will come back with some type of driftnet agreement with Japan, initialed, ad referendum, obviously for approval of others back here.

Now having said that, let me point out to you, that even though something may come back, I am very well aware of problems on this side of the aisle, and problems on the other side of the aisle with regard to the enforcement aspect of the package.

There has been very strong interest in some type of black box transponder to go on the Japanese vessels, so that we can monitor what they are doing.

It is my understanding that this is not a part of the package that may come back, and obviously, the Congress will have to take a look at that and make their own judgment.

Nonetheless, under the Driftnet Act, the Secretary of Commerce, in consultation with State, will have to determine whether this agreement is adequate, and at that point we will look at June 27, and see what we have, and see if we certify, and if we do certify, if we take sanctions.

Mrs. UNSOELD. Why is the black box not part of the consideration, and how would the U.S. plan to protect our salmon from foreign fleets that do not carry U.S. observers?

Ambassador WOLFE. I feel very strongly the black box should be a part of the process. I mean, we have all felt very strongly about that.

Mrs. UNSOELD. Good.

Ambassador WOLFE. I cannot answer for the Japanese, other than because of their own sovereignty reasons, they are not accepting the black box transponder proposal that we have proposed.

Mrs. UNSOELD. Good. Mr. Brennan, if Taiwan, Korean and Japan are certified as not having entered into acceptable driftnet monitoring and enforcement agreements under the Driftnet Act, will your department recommend that import sanctions be imposed against these nations?

Mr. BRENNAN. As you know, after a certification, there is a 60-day period in which the President has to inform the Congress of his action, and during that time, the Secretary of Commerce, I am sure, will be discussing with other members of the Administration what recommendations they wish to make, either jointly or severally to the President about that. I do not think it would be appropriate for me at this time to suggest that we would either recommend or not recommend sanctions.

Mrs. UNSOELD. Given the loss of fish, I hope that you will take a stronger stand on that.

Admiral Leland—

Ambassador WOLFE. Could I follow up? I apologize.

Mrs. UNSOELD. All right.

Ambassador WOLFE. I think it is an important point, though, for the record, anyway. Following up on Mr. Brennan's point. Because of the Secretary of State's interest in this, and Deputy Secretary Eagleburger's interest, I will be meeting this afternoon with representatives from ITA, from USTR, from Department of Commerce, to take a look at the GATT issues with regard to sanctions, to take a look at what is GATT-able. Is it inconsistent? Is it consistent? What sanctions could be taken if we—and we hope we will not—if we find ourselves in a worst-case scenario? We will continue negotiating, trying to get an agreement, but we are reviewing that process now.

Mrs. UNSOELD. Thank you. Admiral Leland, I recognize that the Coast Guard has all kinds of responsibilities, and you have got to juggle the priorities, but explain the factors which determine relative priorities for fisheries enforcement relative to the other Coast Guard missions.

Admiral LELAND. Congress, in large part, helps us decide our priorities. In many of our missions, floors are established, particularly in our appropriations language. I stand subject to correct, but I think that, for example, in the last appropriations bill the Coast Guard was told to expend not less than \$460 million in drug law enforcement.

I suspect that probably with the Valdez, the Exxon Valdez, we will get a floor imposed on us in environmental protection, so, in many cases, in most cases, in all cases, the budget is the action document that generally will help us make priorities. But as I said in my opening statement, irrespective of this kind of determination, the Commandant has directed that fisheries enforcement take on a new emphasis in this particular fiscal year, and the next, and for as long as he is Commandant, and we have really moved out smartly to do so.

Mrs. UNSOELD. How does the Coast Guard deal with allegations of illegal activity outside the 200-mile zone, and what resources do you have to enhance your ability to protect U.S. interests outside the 200-mile zone? And what are the impediments to your taking a more active role in protecting U.S. interests from activities beyond the 200-mile zone, other than you had some difficulty last week, I believe it was, or the week before?

Admiral LELAND. Certainly your constituents, and those of Alaska, have requested, demanded the expenditure of large amounts of flight time, and so beginning with the season, we have been deploying C-130s, normally in Kodiak, further along the Aleutian chain to facilitate our flights out over the suspect areas. We have—and this is going to sound very impressive because I mean to make it so. We have devoted 40 percent of our high-endurance resources in the Pacific—that is two ships—to almost full-time duty in this area, and we will keep this up right through the summer. At least for the season, that we anticipate there will be this kind of gillnet activity out there.

And working very closely with the State Department, we will push as hard as we can for consensual boardings. The greatest impediment of course is international law, and we have to conform to

that, but we will be as aggressive as we possibly can to help bring this to some sort of successful conclusion.

Mrs. UNSOELD. I thank the panel for your presentations, and I would like very much to be able to work closely with you on this problem because I think we have only seen the beginning of the devastating financial impact it is going to have on our West Coast fisheries.

So, let us work together and help push the cause along. Thank you.

Mr. STUDDS. Thank you. The gentleman from Florida.

Mr. HUTTO. Mr. Chairman, since I took 45 seconds at the outset I will reserve my time for the second panel.

Mr. STUDDS. The gentleman is overwhelming in his generosity. The gentleman from California.

Mr. BOSCO. Thank you, Mr. Chairman. Mr. Brennan, I wonder if I could ask you some questions about the Pacific Management Council. The area I represent is about a third of the California coast, and it ordinarily is a virtual battleground over fishing issues, and I do not envy that council having to make the allocational decisions each year.

At some times, though, we have had extraordinarily short seasons, sometimes a matter of only a couple days on salmon, and this year the Pacific Management Council is recommending another very short season.

At the same time, we have done tremendous work to restore our rivers and streams. This Committee has authorized about \$150 million in stream restoration work and we are showing a great resurgence of the salmon and steelhead fishery.

But what ends up happening is the fishermen believe that all the work they have put into this restoration, and the salmon stamp monies that go into it only works against them, because although we have this great resurgence, their season each year gets shorter and shorter.

Can you comment on that? Is there some way in this process that these people that make their living out there, day in and day out, are really getting the short end of the stick with all this regulation?

Mr. BRENNAN. Well, let me say a few things about that. I think that there have been great efforts by the State of California and the Fishery Management Council, and by the fishermen themselves, to enhance the resource, to go out and clean up streams, and provide gravel beds, et cetera, and that costs money, of which many of the fishing organizations are supplying.

The fact is we have a lot more fishermen, recreational fishermen, who wish to participate and have come from California and from other States. There are just a lot more fishermen seeking to harvest the resource than there have been in the past, and that means that the allocation problem becomes more difficult.

Of all the fishery resources, I think salmon is the most difficult to regulate in the exclusive economic zone, because you have, for example, a fairly strong run in the Sacramento River.

On the other hand, there is a real problem in the Klamath River, and those fish are intermingled as they are out in the exclusive economic zone before moving back to the streams where they are

fishable. You are fishing on mixed stocks from a number of different rivers, and what you have to do is make sure that you are sufficiently conservative so you do not eliminate the run from one of the weaker streams.

I do not envy the Pacific Council at all. They have a very, very difficult job in making these fine balances, and, as you know, they have openings and closings to accommodate the runs, and where the runs will be in the EEZ at certain times of the year, balancing the interest of the fishermen and the various rivers that are involved. So it does become a very complex process.

It is a process, I am very happy to say, that all the fishermen participate well in. They may not be fully satisfied with the result that they get from the Pacific Fishery Management Council, but they are in there having an effect on the process, and I think that they are much better served by the system we have out there, where the States involved and the fishermen involved have a real impact on what is proposed than they would be if it were regulated from Washington or even Silver Spring, Maryland.

Mr. Bosco. Well, if I might interrupt you. My experience has been that this decision is pretty much in the bailiwick of the biologists and the experts. That although the fishermen have minimal representation on the council, and although they participate from time to time, ultimately, it is the biologists who argue and fight over all the statistics and eventually come up with a recommendation.

And that I found holds great sway over the council, and later on the Department of Commerce, because each year there is an appeal to you, as you well know.

Is there any way that the fishermen can participate more actively at the level of this biological data, and what it means, and sorting it out, and really meaningfully attempt to have their input reflected in that?

Mr. BRENNAN. Well, the Act does require that we use the best scientific information available, and, of course, the best information about biology is what the scientists look at and what they conclude from that.

I think after you get by the biology, then there are allocation issues and distribution issues that are appropriate for the people in the community to deal with, and, frankly, I would be hard-pressed to say that there ought to be some override of the scientific opinion by fishermen who are not biologists, because obviously their feeling is always going to be that there is more fish there than there really are.

Mr. Bosco. I do not mean to be argumentative, but I think many of those people have spent years on the sea, and have worked the rivers up and down, and have just as good a knowledge of it, and its history, than a lot of the biologists that fly in and render their expert decisions and impose, sometimes, draconian rules on everyone, and really have no counterbalancing weight, in the sense that they do not depend on fishing for their living.

They depend on studying, and seining, and we have more people up there sometimes counting fish than we have fish.

Mr. BRENNAN. That says something about the resource.

Mr. BOSCO. Well, no. Even though our resource is greatly improved—and I think many of these people are helping us with that—but I really would argue with any contention that just the biologists understand what is happening with the fishery because I think that is the type of elitism, in a way, that is causing a lot of undercutting of our purposes here amongst the fishermen.

Mr. BRENNAN. Let me make sure that I am clear about this. The biologists, the staff, the experts, are there to give the Fishery Management Council the basis of their expert opinion, and it is up to the Council, who are composed of representatives of the States, and of the people actually fishing, to take that, and leaven it with their practical experience as fishermen, or State regulators, and come up with a regulation for the year.

It is not a perfect system, but I really believe that is the best way to get the fairest shake for everyone, is the way we have the councils now, and that is with people who are knowledgeable and experienced in the fishery making that decision.

Mr. BOSCO. Thank you. Thank you, Mr. Chairman.

Mr. STUDDS. Does Mr. Herger have—the gentleman from California have questions?

Mr. HERGER. No questions, Mr. Chairman.

Mr. STUDDS. We thank you. Let me just observe that the Chair, and I am sure other Members, have many, many other questions. We are going to have to forego asking them. My own questions dealt almost exclusively in the area of enforcement. I have many others, but the physical demands of time are such that we are going to have to move on. The staff told me this panel would be done by 11:00 o'clock. You see what kind of shape we are already in.

Gentlemen, we thank you. We will be pursuing this individually with you, publicly as well as privately, as we take a look at it. We appreciate it.

We will go to the second panel which consists of a spokesperson for each of the eight regional fishery management councils. The Chairman, in each case, as I understand it. You can somehow come and take your places at the table.

If we could expedite this, we would appreciate it.

If the Coast Guard could do some icebreaking there, it would be helpful.

Let's have socializing outside, please. We have got work to do here.

[Pause.]

Mr. STUDDS. Let me observe that we have all eight Chairmen of the regional councils here. Each one presumably is possessed of all kinds of resources of knowledge and wisdom and insight, and ought, in any reasonably fair world, to be given several hours to convey that to the Committee. This is not, now that you are Chairmen, you know, a reasonably fair world, and we are going to ask you, as far as is humanly possible—you can all do arithmetic, and multiply eight times whatever—somehow, confine your initial oral statement to somewhere between three and five minutes.

The House is going into session at noon. There will undoubtedly be a vote, or more. It is going to be difficult, at best, to try to have

an opportunity to hear what it is that you have to say that, in your judgment, is most important.

So let me just ask you, if I could, one more time—all of your statements will appear in the record in their entirety. Try, as you get to the challenge of summarizing them, to think—what are those most important things, based on your own experiences around the country, that you would like to leave this Subcommittee with.

We are looking back now, some 13 years after the enactment of the law. Many of the Members of this Committee were here through those early stages. Some have come in the intervening years. We have to ask the really fundamental questions as well as the technical modifications. So think about what you most want to leave with us. Many of you have traveled considerable distances to be here. We appreciate that.

We apologize for the constraints of time. It is not, as I said fair. It is not fun, it is not productive, and we work on it all the time. We are sorry about that.

We are going to go, if it is all right with you, in the order in which you appear on the witness list. I do not know if there is any logic to that. I have not tried to figure it out, but if it is okay with you we will go in that order, starting with Ms. Elaine Knight of the South Atlantic Council. Ms. Knight.

STATEMENTS OF A PANEL, CONSISTING OF MS. ELAINE KNIGHT, SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL; STEPHEN MONSANTO, CARIBBEAN FISHERY MANAGEMENT COUNCIL; WILLIAM PATY, WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL; JOHN PETERSON, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL; JAMES McHUGH, MID-ATLANTIC FISHERY MANAGEMENT COUNCIL; RICHARD SCHWARZ, PACIFIC FISHERY MANAGEMENT COUNCIL; WILLIAM CHAUVIN, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL; AND DAVID BORDEN, NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Ms. KNIGHT. On behalf of the council chairmen, I thank you, Chairman Studds, and Members of the Committee, for inviting us to appear before you to present testimony on issues relevant to the amendment and reauthorization of the Magnuson Act. I am Elaine Knight, Chairman of the South Atlantic Fishery Management Council, and I will give a brief introduction to the testimony the council Chairmen will present to you today.

As Chairman Studds had requested, we have coordinated our testimony so that it will be concise, and to the point, in addressing the issues.

Over the past 2 years, the council Chairmen have met and interacted on a more frequent basis. This increased interaction initially resulted from the need to collectively react to the then-developing Secretary's regulations and guidelines that affect all aspects of council operation.

Most recently, this forum has served as a deliberative process in developing the recommendations that will be presented today. There has been a significant amount of effort from all concerned in developing these recommendations, and, as you might well imag-

ine, all the Chairmen do not agree on all the issues. Also, though we, as Chairmen, have acted with the advice and knowledge of our respective councils, the testimony we are presenting today is that of the council Chairmen.

There are 14 amendments to the MFCMA that we are recommending. All are made with the sincere intent to improve the Act by the Chairmen supporting them. They range from minor technical amendments that should not upset anyone, to the inclusion of tuna, which we all know has and will continue to ignite emotions and controversy.

Attached to my testimony is a list of the amendments being proposed. The other council Chairmen will address these amendments in their testimony, as well as issues that are important to each of their regions.

There will also be testimony presented on recommended council funding levels, and additional funding needs relative to the NOAA fisheries budget. The major issues and concerns specific to my council are the same as those you will hear expressed in the other councils' testimony, particularly the Gulf council.

Chairman Studds, on behalf of the council Chairmen, I am requesting that our testimony presented here today be entered into the hearing record. Also, if you or other Members of the Committee require any further information, please let us know and we will be happy to provide it for you. Thank you.

[The statement of Ms. Knight and attachments can be found at end of hearing.]

Mr. STUDDS. Let me just say that without objection, the entire testimony of all the Chairs will appear in the record, and let me just say that if you are as concise and as coordinated as you appear to be, there will be a moment of silence here in the Committee as we all recover. We really, really appreciate that.

Mr. YOUNG. For thanks, of course.

Mr. STUDDS. That is the same thing. We just try not to say that. I appreciate that, Ms. Knight, very much. Next, Mr. Stephen Monsanto of the Caribbean Fishery Council. Mr. Monsanto.

STATEMENT OF MR. MONSANTO

Mr. MONSANTO. Mr. Chairman and Subcommittee Members, my name is Stephen Monsanto and I am Chairman of the Caribbean Fishery Management Council, and I really appreciate being able to appear before you today to present testimony on behalf of the Fishery Management Council Chairmen.

I would like to address the proposed NOAA Fisheries fiscal year 1990 budget. As you are aware, the councils and all participants in management of fisheries under the Magnuson Act are largely dependent on NOAA Fisheries programs to provide management data and analyses; basic research on and monitoring of the fisheries; enforcement, cooperatively with the U.S. Coast Guard; and technical support in processing management actions.

All of these areas of responsibility are critical to proper management of the Nation's fishery resources, and yet support in these areas has been continually declining as a result of budgets that are annually reduced in terms of real dollars.

We believe the current NOAA budget proposed by the Administration does not make the necessary commitment to manage and conserve our fisheries resources—

Mr. STUDDS. Excuse me, sir. Can you speak a little more closely into the mike. It is difficult to hear you.

Mr. MONSANTO. OK.

Mr. STUDDS. Thank you.

Mr. MONSANTO [continuing]. —and if funded at the requested level would essentially make effective fisheries management impossible.

At a minimum, we support a NOAA Fisheries budget equal to the fiscal year 1989 level. We believe it should be much higher, but appreciating the difficult task before you in balancing the budget, we hope you will authorize a level that provides for moderate increases in critical areas. Two critical areas of concern that should receive increased funding are fisheries data collection and law enforcement.

These perhaps represent the two weakest links in the Magnuson Act fisheries management process. Without accurate fisheries data for the councils to base their management decisions on, and adequate law enforcement to insure those decisions are carried through, the whole management system is doomed to failure.

Mr. Brennan has indicated to us in the past that fisheries management under the MFCMA will be one of the highest priorities of his agency; therefore, we feel that if adequate funding is made available, he will insure this priority is effectively realized. Considering the tremendous value of our commercial and recreational fisheries to the local and national economies, we believe sufficient funding to properly manage these renewable resources should be a high national priority, and strongly recommend NOAA Fisheries be adequately funded to accomplish their fisheries management mission.

Most of the programs in NOAA Fisheries budget are important to us individual or collectively as councils. Other chairmen will emphasize programs of importance to their regions. Thank you very much for your time.

[The statement of Mr. Monsanto can be found at end of hearing.]

Mr. STUDDS. Thank you very much, Mr. Monsanto. Next, Mr. William Paty of the Western Pacific Council. Mr. Paty.

STATEMENT OF MR. PATY

Mr. PATY. Thank you, Chairman Studds, and Members of the Subcommittee. I am Bill Paty, Chairman of the Western Pacific Fisheries Management Council, and I would like to talk to you this morning about some of the funding needs for the eight management councils and talk a little bit about some of the issues facing the Western Pacific Council itself.

In the past, the funds appropriated by Congress for management of the U.S. fisheries resource were adequate for the councils to meet their administrative and programmatic needs. In 1978, programmatic funding made up approximately 27 percent of the councils' total budgets. These programmatic funds were used to collect

management information, primarily through short-term studies in cooperation with State agencies and universities.

These projects are necessary because NMFS is often the victim of funding and manpower shortfalls. Since 1980, the councils' annual budgets have remained nearly constant. With the development of fishery management plans—and we have four of them in our council alone—management responsibilities have been ever-increasing. Then in order to compensate for these increased management responsibilities, the councils have had to use a greater proportion of their total budgets for administration, monitoring, analyzing, culminating in the fiscal year 1989 council budgets with no available programmatic funding.

In addition, as a result of the level of funding all councils have had to shift their activities. This has resulted in fewer meetings, fewer locations, the councils and their advisory groups, as well as the public hearings. These factors have diminished the planned development and amendment process. Councils have also reduced staff or employed less experience, i.e., less experienced personnel and therefore less expensive.

Reduced funding levels have affected the efficiency and effectiveness of all of our operations, to the point where some councils have had to postpone development of needed FMPs.

We Chairmen are very aware of the constraints on Congress in the effort to achieve a balanced budget. We are also charged with the responsibility of managing, enhancing, and conserving a vast natural resources, and are requesting therefore, a modest and reasonable funding increase with a combined annual budget of \$8.7 million for the eight councils. This is a realistic minimum estimate of what we feel is needed to accomplish most of the tasks required under the Act.

At Chairman Studds' request, you already have received a summary of the eight councils' 5-year funding summary. My fellow Chairmen will present additional comments on the budget and their operations. Now, I would like to spend just a couple of minutes to review for you some of the problems we face in the Western Pacific Council in the management of 1.5 million square miles that constitutes the EEZ of Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Americans islands in the Pacific are surrounded by a marine environment that is most truly oceanic in nature compared to any other council. Our marine environment is our major resource.

The harvest of migratory pelagic fish overwhelmingly dominate catches within the councils' jurisdiction. Over 84 percent of the commercial landings in the Pacific island areas in 1987 were tuna, billfish and associated pelagic species. Tuna, alone, accounted for 67 percent of the commercial catch.

The harvest of pelagic species, including tuna, in our region has grown 67 percent over 1983 levels. The next vessel, the revenues have increased 64 percent. So the level of commercial fishing activities out of Hawaii, for example, is increasing very substantially in recent years. We have seen a long-line fleet increase from 25 boats in 1986 to over 50 boats, and then most recently we had 14 boats, Vietnamese boats come up on the Gulf, and they have begun

long-line operations, and they are primarily targeted on tuna for the fresh market.

In January of 1989, there were 124 long-liners transshipping out of Guam. American Samoa, at present, purse seine and fishing skipjack are waiting up to three weeks to unload, although the canneries are working 7-day weeks. Although we are presumed to be responsible for the management of these vital resources within our EEZ, tuna, as you know, is not included in the Act. And we have concluded a summary of commercial landings.

We also are concerned about the recent proliferation of pelagic driftnet gill fishing, and that has been discussed this morning. I will not enlarge on that except to say that in 1988, in addition to the discussion about the drift gillnetting in the Northern Pacific, the large-mesh driftnetters have invaded the South Pacific to catch juvenile albacore tuna, and estimates by the FAA suggest that stocks in those particular fisheries will dwindle to 10 percent of the current level within 5 years, if drift gillnetting continues.

A third issue we have related to the possible users' fees. We feel that if the funding is not available to us to do the job we are asked to do, then we feel that to better manage these rapidly expanding commercial and recreational fishing industries we need more comprehensive data-gathering efforts for implementing existing fishery management plans, included limited entry programs; establishing a sound scientific basis for plan amendments, and for observer coverage on domestic fishing.

These tasks cost money. In light of the continually shrinking NOAA fisheries budget, we feel that user fees may be necessary. Thank you, Mr. Chairman, for the opportunity to present our views.

[The statement of Mr. Paty can be found at end of hearing.]

Mr. STUDDS. Thank you, sir. Next, Mr. John Peterson of the North Pacific Council. Mr. Peterson.

STATEMENT OF MR. PETERSON

Mr. PETERSON. Mr. Chairman, and Members of the Subcommittee, my name is John Peterson. I am Chairman of the North Pacific Fishery Management Council.

Chairman Knight has summarized those proposals supported by the council Chairmen, and two of them, proposals number one, and 12, are of particular importance to the North Pacific Council.

The high seas interception of North American salmon and steelhead by driftnet fleets of Taiwan, Korea, and Japan, is perhaps the most explosive issue now facing our region.

We condemn the use of these huge driftnets that indiscriminately catch and kill everything from fish to marine mammals to birds, and when lost, continue to ghost fish and become hazards to navigation.

By adding this new purpose to section 2 of the Act, the elimination of driftnet salmon interceptions will be strengthened and certainly put in very sharp focus.

Proposal number 12 is another issue of great importance to us, but with the phasing out of foreign observer programs, we no

longer have adequate information upon which to base sound management decisions.

The council is unable to meet its obligations under the Act without a comprehensive data-collection system with adequate observer coverage, and properly funded.

Since Federal funding does not seem to be available for these critical needs, alternate funding sources must be developed.

Proposal number 12 removes the current limitation in the Act that fees not exceed administrative costs, thereby allowing the councils to establish regional cost-recovery programs to fund these needs. In this regard, please consider H.R. 1554, introduced by Congressman Young, which would provide funds by authorizing the regional councils to require resource users to pay fees as part of a fishery management plan.

In fact Congressman Young's bill probably does a better job of establishing a base for cost-recovery fees than does the council Chairmen's recommendation.

In addition to proposals one and 12, there are other important issues of great concern to the North Pacific Council. A particularly critical problem is the unrestrained, unmonitored foreign fishery on pollock in the "Doughnut Hole," a small body of international water located outside of, and enclosed by the exclusive economic zones of the United States and the Soviet Union.

Over 1.3 million metric tons of pollock were harvested last year in that "Doughnut Hole" by Japan, China, Poland and Korea. That is an amount equal to the total pollock harvest in our zone. We do not know the impacts of these foreign catches on our stocks of fish nor on our industry.

During the past year and a half, the council has urged the Secretary of State to move quickly and decisively to control these foreign fisheries, and yet, there does not seem to be strong leadership on the part of State to initiate a meaningful plan of action.

We ask your help in prevailing on the State Department to bring these foreign fisheries under control in order to protect the resource and the U.S. industry that depends upon it.

Other issues that come before the North Pacific Council are, one, bycatch, wastage, and discards. This is a complex and difficult set of problems we have been working on for some time, and will probably continue to work on for some time.

Number two, inshore-offshore priorities, including the growing controversy between shore-based and floating operations.

Number three, full utilization which may require the prohibition of roe stripping operations that discard unused fish carcasses. And four, of course, the oil spill disaster which is expected to negatively impact fish populations.

As we deliberate these and other issues, various segments of the industry will be stressed. They will also be distressed, and I have every confidence that you all will be hearing from them on these issues.

I also call your attention to the funding document attached to my testimony. It describes seven critical funding needs that are supported by 19 major fishing, processing, and marketing associations from Alaska, Washington, Oregon and California. The document was circulated here, in Washington, D.C. by industry repre-

sentatives in early April, and was presented to the House Appropriations Committee on April 13th.

Thank you for this opportunity, and I assure you that the fish industry in the Northwest is looking forward to your regional hearings in Seattle and Alaska. Thank you.

[The statement of Mr. Peterson and attachments can be found at end of hearing.]

Mr. STUDDS. Thank you very much, Mr. Peterson. Mr. James McHugh of the Mid-Atlantic Council. Mr. McHugh.

STATEMENT OF MR. McHUGH

Mr. McHUGH. Chairman Studds and Members of the Committee, I am Jim McHugh, Chairman of the Mid-Atlantic Council. I have several constructive recommendations to present for your consideration on behalf of my fellow Chairmen.

First, I would like to say, very briefly, I look forward to the future hearings on highly migratory species.

Section 201 of the Act deals with foreign fishing. In 1980, while the councils involved with foreign fishing were on the learning curve, section 201(d) was amended to address apparent problems with the allocation of allowable levels of foreign fishing.

Subsequent to the amendment, we developed the concept of framework FMPs, which by specifying ABC, Allowable Biological Catch, optimum yield, domestic annual harvest, and processing levels and joint venture processing, and allowable foreign fishing levels, have provided greater flexibility to the management decision process.

As a consequence, the annual specifications are generally a matter of proposed rulemaking or a simple notice action. To the best of my recollection, the present provisions of the section I refer to have been used only once in a butterfish matter.

Consequently, Mr. Chairman, the council Chairmen recommend that all of section 201(d), with the exception of some language in section 201(d)(2), be deleted as no longer necessary and appropriate.

I will submit, for the record, recommended adjustments covering the exception.

Section 204 deals with permits for foreign fishing. Subsection (b)(10) provides for the payment of tonnage fees by foreign nations. Paragraph (b) of this subsection establishes a formula by which these fees will be determined based on a ratio of fish harvested by foreign vessels in our EEZ as compared to the harvest of U.S. vessels both in our EEZ and in the territorial sea, this harvest including menhaden, the recreational fishery, and shellfish.

The product of this formula creates a reduced value for fish harvested by foreign fishing vessels. It is a comparison of apples and oranges. If the phrase, "and the territorial waters of the United States" was deleted from the paragraph, the tonnage charges for foreign-harvested fish would increase about 25 percent.

Although Atlantic Mackerel is the only remaining fishery which considers foreign nation requests for directed fishery, we believe the proposal worthy of consideration in the light of the needs for increased funding, data collection and enforcement.

Mr. Chairman, all the council Chairmen, with the exception of the Pacific Council, support this recommendation.

In view of the fact that NOAA fisheries' budget is subjected to continued statutory reductions, it is further recommended that section 204(b)(10)(F) be reviewed to reconsider the purpose for which foreign fishing fees have been escrowed.

It is respectfully suggested that all foreign fishing fees collected should be dedicated for the purpose of supporting the NOAA fishery needs to provide councils with scientific data and a viable enforcement capability.

Section 302 deals with the structure and responsibility of the fishery management councils. All the council Chairmen support the proposal that section 302 (j) be amended to provide that the councils be exempted from the requirements of the Paperwork Reduction act. Information is the lifeblood of proper management. The essential and least expensive source of such information are fishermen's log books and processor/dealer reports. Log books are the only reliable source of effort data without which catch values will convey a variety of confusing indicators.

The council Chairmen agree that the current provisions of the Paperwork Reduction Act are a major impediment to satisfying the best information available requirements of the Act. The mandated percentage reductions in paperwork which, in our case, is truly data collection, combined with the proposed budget reductions for data collection, translate into severe declines in the councils' ability to prepare meaningful FMPs and properly manage our fishery resources.

Section 303(e) addresses data collection with a special reference to the secretarial action upon request from the council for plan development assistance. When subsection 303(d) was amended in 1986, to allow council staffs access to available data, we believed that the failure to provide for compensating amendments in section 303(e)(2) was an oversight.

Consequently, we suggest the parenthetical exclusion of the use of confidential data be deleted from this subsection.

The Mid-Atlantic Council, Mr. Chairman, is extremely concerned about the continued decline of available resources for the acquisition and processing of essential scientific information.

Even now, our council is severely restricted in proceeding with plan development and monitoring for bluefish and Atlantic mackerel. The sharks are being harvested at dangerous levels for these species, yet our request for secretarial data collection support under section 303(2) was denied for lack of funding.

Despite these problems, the Mid-Atlantic Council has managed to elevate both butterfish and Lligo squid from their former underutilized status to full utilization by the United States fisheries. Within the framework of available resources, Mr. Chairman, we are targeting on a 100,000 metric tons of Atlantic mackerel within the foreseeable future.

I should point out that the great percentage of these processed products are export.

Finally, Mr. Chairman, I would like to state that the Mid-Atlantic Council fully supports the proposal to fund the councils at the \$8.7 million level, and funding for NOAA fisheries at levels neces-

sary to staff, acquire, and process the data so vital to proper management.

We submitted a letter expressing our views on NOAA fisheries' budget on March 22nd. Our highest priority was sufficient funding to support the responsibilities for data collection and analysis. Other priority items were identified in that letter.

Thank you, Mr. Chairman, and the Committee for your interest.

[The statement of Mr. McHugh can be found at end of hearing.]

Mr. STUDDS. Thank you, sir. Next, Mr. Richard Schwarz of the Pacific Council. Mr. Schwarz.

STATEMENT OF MR. SCHWARZ

Mr. SCHWARZ. Mr. Chairman, Subcommittee Members, I am Richard Schwarz, Chairman of the Pacific Fishery Management Council, obviously an enviable position as the prior questions have indicated.

I appreciate the opportunity to appear before you today. The council Chairmen unanimously recommend that Congress strengthen our collective ability to influence actions which will restore, maintain, and protect fishery habitat. The Magnuson Act has been amended to allow for council comments on any activity by a State or Federal agency which may impact fish habitat and to require that council fishery management plans include information on habitat. These were very useful amendments which gave the councils their first entree into habitat issues affecting ocean fisheries. Habitat degradation and pollution have been and continue to be significant problems affecting marine and anadromous fishery resources.

We recommend that existing laws and authorities be used to the fullest extent to halt further aquatic habitat degradation, and, where appropriate, that legislation be strengthened to assure that existing habitat is protected. The Magnuson Act should be amended to enunciate congressional policy or intent with regard to habitat protection. This will strengthen the councils' recommendations to Federal agencies implementing actions which adversely effect ocean fisheries. The councils are guided by a policy of no net loss to the productive capacity of marine, estuarine, and freshwater habitats which sustain commercial, recreational and native fisheries.

With your help, we will continue to monitor and comment on proposed actions which impact fishery resources, and will hopefully improve our ability to implement this policy. We believe that ecosystem health is the key measure of success in controlling pollution and habitat impacts, and that habitat requirements of fish and shellfish should be given priority consideration in any decisions which impact them.

Along this line, it is very frustrating to see actions taken by one part of the Federal Government which negate actions taken by the other, specifically when we are talking about freshwater spawning grounds for anadromous fish.

In regard to funding issues, the Pacific Council is particularly concerned about adequate funding for the Pacific Fisheries Information Network or PACFIN. This is a cooperative fishery collec-

tion, analysis, and monitoring program which builds on existing State programs to meet Federal management requirements.

A fully funded system would provide needed data to the Western Pacific, North Pacific, and Pacific councils. The Pacific Council uses PACFIN data to make critical in-season management decisions affecting the livelihoods of thousands of fishermen. Without these data, the risk of overfishing, or underfishing is increased, with loss of benefits in both cases. The Administration included PACFIN in its budget submission to Congress but tied it to passage of a marine fishing license. We would hope that Congress will fund it despite this linkage. We also support the high-priority projects outlined by Chairman John Peterson, which are critical to the effective management of Pacific Ocean fisheries.

Again, thank you very much for this opportunity.

[The statement of Mr. Schwarz can be found at end of hearing.]

Mr. STUDDS. Thank you, Mr. Schwarz. We are going to pause right here. There is a vote on the floor, albeit one of absolutely no consequence.

Mr. HUTTO. Mr. Chairman.

Mr. STUDDS. Yes?

Mr. HUTTO. Could I be recognized for just a second, and ask that questions that I have submitted to Mr. Chauvin of our Gulf Council to be answered at a later date.

Mr. STUDDS. Certainly. Without objection.

Mr. HUTTO. Thank you.

Mr. STUDDS. What we are going to do is the following: we are going to pause for no more than 10 minutes, which is almost the record for getting across the street and back for people our age. We will then resume precisely where we left off.

Let me just say to members of the council, that when we finish the remaining two statements, I think what I would like to ask you each—and think about it in the time when we are lumbering across the street and back—is that as we look back over 13 years—obviously there is a time and place to celebrate the successes of the Act, and we will all be ingenious in looking for that but this is not that time and that place. What we are looking for is what, if anything, needs changing, and I would just like each of you to reflect, and briefly to respond to the question, in your region, what is the single-greatest problem or disappointment, or shortcoming that you see to date? And what would you recommend we do about it?

That will be my first question to each of you when we are finished with all eight. We will be back as soon as the human body permits.

Miss SCHNEIDER. Mr. Chairman.

Mr. STUDDS. Yes?

Miss SCHNEIDER. I regret that I have another appointment forthcoming, too, and this vote is going to detain me further. I have some questions along the lines of your own, actually only two, and perhaps you can incorporate my questions into yours when you return?

Mr. STUDDS. We will do our best.

Miss SCHNEIDER. Thank you, kindly. I appreciate it. Thank you.

Mr. STUDDS. The Committee stands adjourned for roughly 10 minutes.

[Brief recess.]

Mr. STUDDS. Just have a small measure of congressional credibility here. I said 10 minutes. Nobody believed we would make it. Marginally. OK. We will resume where we left off. Mr. William Chauvin. Well, I do not know how they pronounce that down there. Is it the Cajun or the French pronunciation?

Mr. CHAUVIN. Down in Louisiana it is Chauvin.

Mr. STUDDS. Chauvin. Of the Gulf of Mexico Council. Mr. Chauvin.

STATEMENT OF MR. CHAUVIN

Mr. CHAUVIN. Thank you, Chairman Studds, and Members of the Committee. I am Bill Chauvin, Chairman of the Gulf Council, and thank you for this opportunity. On behalf of the Chairman of the eight councils, we are requesting the committee considering amending section 302(a), (1) through (6) and (8) to specify there be an obligatory council seat from each State, and all of the Chairmen support this proposed amendment.

Until January of this year, an obligatory seat was provided by Federal regulation under 50 CFR Part 601. Last fall, NOAA fisheries proposed in draft regulation, the elimination of the obligatory seat provided by Federal regulation since 1977.

Their rationale was that this provided more discretion to the Secretary in appointing members. All of the councils, and many State Governors opposed their proposed revision. In the final 601 regulation published this January, NOAA fisheries revised their position only to the extent that the member selected would be from persons nominated by the Governor of that State for both the State seat and any other at-large seat currently held by another State.

The councils feel that the obligatory seat should be maintained and that this is consistent with the legislative intent since the Senate bill for the Magnuson Act made all seats obligatory.

The success of most of our plans is dependent on cooperative action by the States for implementing compatible rules in their jurisdictions. Therefore, we believe the Governors should be able to nominate three or more persons to an obligatory seat representing that State.

Also the councils are requesting that a new subsection be inserted into section 304 that would provide that regulatory amendments be processed with the same statutory time periods as plans or amendments.

Regulatory amendments were intended to be a mechanism whereby certain modifications to an FMP could be processed through the system and implemented faster than regular FMP amendments, but this mechanism has not worked in many instances.

Regulatory amendments have no mandatory schedule for review and approval, and are not always processed expeditiously. One Gulf Council regulatory amendment required almost 3 years for implementation. Other councils have experienced the same delays with their regulatory amendments.

NOAA fisheries has encouraged the councils to include framework measures within the FMPs, to allow for modifying plans

without having to amend the FMP. Many such framework measures are implemented by the regulatory amendment process. Unfortunately, because there is no mandatory time-frame for review and approval, the amendments are relegated to a secondary status and processing is delayed, thereby creating significant management problems.

The delay generally occurs at review levels above NOAA fisheries. The inclusion of regulatory amendments in section 304 would in no way prevent them from being processed and approved more rapidly than FMPs; however, it does insure that they will be processed in a timely manner.

Mr. Chairman, our Chairmen have jointly submitted an overview of funding needs for fishery management, enforcement, research, and data collection, which generally support the needs for a NOAA fisheries budget equal or greater than that for fiscal year 1989.

The councils are jointly requesting a funding level of \$8.7 million. That level is realistic. It is a realistic estimate of the amount needed to allow us to carry out most of our responsibilities under the Magnuson Act.

Our council, like others, has had to annually reduce our activities over the last 6 years to live within the available funding. We are now operating with six meetings each year instead of eleven.

We have been forced virtually to eliminate most committee meetings between council sessions, and we cannot convene our scientific and advisory panels frequently enough to review all FMPs or amendment actions.

There are now eight FMPs in effect for the Gulf, and we are faced with developing plans for sharks and butterflyfish. Over the last 6 years, funding for programmatic studies by the councils to gather management information has continually decreased and none has been available for the last 2 years.

During the same period, funding for NOAA fisheries for data collection and analyses, for research, for enforcement, and for management has similarly declined. For example, there are only 18 NOAA fisheries enforcement agents for the entire Southeast, including Puerto Rico and the Virgin Islands.

We, in the Gulf, support a higher level of funding for NOAA fisheries since they have been and are severely constrained in providing the support needed to manage our fishery resources.

Since most of our responsibility is for fisheries that must be cooperatively managed by the States and the Federal Government, we also support restoration of funding for the interjurisdictional fisheries grants to the States and commissions.

We also support full funding for cooperative State and Federal programs such as Seemap, upon which our management data for shrimp and reef fish depends, and for Marfin, which provides management data for mackerel and red drum.

We also support a significant increase in funding for collection of statistical data from recreational and commercial fisheries, and for the processing and analyses of these data by NOAA fisheries.

In summary, our information, management and enforcement requirements have been constantly increasing while support of these activities has been declining. Thank you.

[The statement of Mr. Chauvin can be found at end of hearing.]

Mr. STUDDS. Thank you, sir. And finally, Mr. David Borden of the New England Council. Mr. Borden.

STATEMENT OF MR. BORDEN

Mr. BORDEN. Chairman Studds and Members of the Subcommittee, thank you for allowing me to appear before you today. My name is David Borden and I am the Chairman of the New England Fishery Management Council.

I would like to take the opportunity to address several amendments to the Magnuson Act that are being proposed by the council Chairmen, and to mention, briefly, other matters that concern the New England Council.

In the interest of time, I will depart from my prepared testimony and just briefly summarize what I consider to be the most important points.

Mr. STUDDS. Try to keep the mike close to you, sir; it is hard to hear, otherwise.

Mr. BORDEN. The council Chairmen are in general agreement that four additional changes are necessary in order to improve the effectiveness of council operations. These changes relate to specific legislative requirements that fishery management plans be subject to the National Environmental Policy Act, NEPA; that council staff members be eligible for reimbursement for actual expenses; that the legal notification procedures be liberalized; and that councils be afforded an opportunity to obtain written legal advice from NOAA prior to formal submission of a management measure.

A detailed justification and discussion of these suggested amendments is contained in your written material. I would be more than happy to answer any questions about them.

I will now offer a few brief comments on behalf of the New England Fishery Management Council.

The New England Council has had mixed success in achieving the goals of the management plans for the most important species in our waters. I am pleased to be able to report that the goals of the lobster FMP are being fully achieved. In concert with the major lobster-producing States, scheduled increases in the minimum size of lobsters are underway and will result in added protection for this valuable resource.

In terms of our second major species group, scallops, the high abundance of Atlantic sea scallops which exists in all major resource areas is expected to continue over the next several years.

The council is working closely with the scallop industry to develop alternatives to the current meat count system which has proven burdensome to the industry and has been difficult to implement and enforce.

Problems persist with the multispecies fishery, although there are some reasons for cautious optimism. As has been well publicized, resource abundance of cod, haddock and yellowtail, flounder and several other major groundfish species is at historic low levels.

Our council is convinced that inadequate enforcement in the Northeast has resulted in a low level of compliance and has been a major factor contributing to these population declines.

The council has been extremely vocal and active in seeking the enforcement support necessary to effectively implement our management program. It is my intention to submit to the Subcommittee a detailed review of the efforts made by our council to address the enforcement and compliance problem. I would strongly urge the Subcommittee to fully examine the enforcement issue.

I would like to just briefly touch on several other problems in the Northeast.

As a number of other council Chairmen have indicated that funding remains a problem. There are essentially two components of this problem. One is a fixed level of funding or a low level of funding. The second component of the problem is the process by which the councils derive funding. We believe that Congress should examine both of these aspects of our funding difficulties in an attempt to resolve several of the problems.

Another aspect which has been troublesome to the New England Council is the issue of legal notices. There is a requirement contained in the Act which requires all councils to publish the time, place and agenda of all meetings of the councils, its committees and advisors, in local newspapers.

The fact of the matter is that these legal notices are rarely, if ever, read by fishermen. In some cases, the costs of publishing these legal notices can be as high as \$10,000. We urge that the notice requirements be made more flexible to allow for more prudent use of funds and more effective communication with the fishing community.

I would just like to conclude with two comments, that our council is in concurrence with the proposal by NOAA to increase the maximum penalty provisions. Our council has formally endorsed an increase in the penalty structure up to \$50,000, and I am fairly confident that, in fact, if we put the \$100,000 proposal back for a review by the council, that they would indeed endorse it.

I would also say that I think that the Act warrants considerable review in terms of the issue of permit sanctions. There has been a continuing reluctance on the part of NOAA and NMFS to suspend permits, or to revoke permits, and I think that some congressional guidance is needed on the subject. Thank you very much for the opportunity to address you.

[The statement of Mr. Borden can be found at end of hearing.]

Mr. STUDDS. Thank you, sir, and thank you all. I have to say that having looked over the combined presentation of the eight Chairs, I do not ever recall seeing testimony of this complexity coordinated this well amongst people from very different places. Obviously a lot of effort went into this, and we very much appreciate it. It is very important. It is going to be extremely helpful to us.

Just for the fun of it, and really, just for my own information—I suppose I could find this out by pouring through something the staff has up here—but the councils have on them representatives from commercial interests, recreational interests, State and Federal officials, et cetera. Any individual on the council is eligible to be Chairman.

Just for the record, and just for my own curiosity, if you will, could I ask you to go back again, in reverse order, starting again

with Mr. Borden, and just tell me what you do in real life and what interest you represent on the council.

Mr. BORDEN. What I do in real life? I am actually a biologist with the Rhode Island Division of Fish and Wildlife. I head the Marine Fisheries Program for the State.

Mr. STUDDS. Mr. Chauvin?

Mr. CHAUVIN. I am a consultant for the shrimp industry. I also represent them as Executive Director of the American Shrimp Processors Association.

Mr. STUDDS. Mr. Schwarz.

Mr. SCHWARZ. I am a retired Federal employee. I worked for the Atomic Energy Commission and the Department of Energy in Idaho, until I retired. I am an engineer by training.

Mr. STUDDS. Mr. McHugh.

Mr. MCHUGH. Mr. Chairman, I operate a fire protection engineering consulting business in Virginia.

Mr. STUDDS. A what?

Mr. MCHUGH. Fire protection engineering consulting.

Mr. STUDDS. I do not know what that is but I think I could use it. What—

Mr. MCHUGH. Pardon me?

Mr. STUDDS. Go ahead. Bio protection?

Mr. MCHUGH. Fire protection.

Mr. STUDDS. Oh, fire? I am sorry.

Mr. MCHUGH. Yes, sir.

Mr. STUDDS. Oh, forget that. I thought it was bio protection. Thank you. Mr. Peterson.

Mr. PETERSON. I retired 5 years ago as chief executive officer of one of the major fish processing companies in the Northwest. Oregon, Washington and Alaska.

Mr. STUDDS. Mr. Paty.

Mr. PATY. Mr. Chairman, I am Chairperson of the Department of Land and Natural Resources for the State of Hawaii and an avid weekend fisherman.

Mr. STUDDS. I knew somebody would be a fisherman, sooner or later. Mr. Monsanto.

Mr. MONSANTO. I am a partner in a wholesale fish business in St. Thomas, and also I monitor juvenile justice programs funded by the Department of Justice.

Mr. STUDDS. And Ms. Knight?

Ms. KNIGHT. Along with my husband, we own and operate a small family-oriented fishing business. We have our own shrimp trawlers as well as a processing plant. We deal in fresh wholesale of shrimp.

Mr. STUDDS. Where is that?

Ms. KNIGHT. In Georgia.

Mr. STUDDS. In Georgia.

Ms. KNIGHT. And I would hate to tell you what my job in real life is.

Mr. STUDDS. Well, you can do that off the record.

[Laughter.]

Mr. STUDDS. Well, I am glad I asked the question. That is diversity, I guess. Let me go back, then, and we will start with Ms.

Knight, going back around in sort of a human way, fashion, here, with the question I alerted you that I would probably begin with.

As you look back—I guess each of you probably have been associated with the councils for a different number of years, but some of us, one way or another, for well over a decade now. Look at the councils' operations in your respective regions. What would you identify as the single greatest disappointment, or shortcoming, or failure, or inadequacy, to date, and how do you think we ought to go about dealing with it? Ms. Knight?

Ms. KNIGHT. I think you are going to hear probably the same from many other members of this panel, but probably the most significant problem that we have in our area is non-sufficient data, both biological and economic, and now—

Mr. STUDDS. Bring the mike just a little closer. I am sorry.

Ms. KNIGHT. I am sorry.

Mr. STUDDS. Thank you.

Ms. KNIGHT. Do I need to repeat myself?

Mr. STUDDS. I would appreciate it if you would.

Ms. KNIGHT. I said I think probably you are going to hear this same statement from other members of the panel, but I think probably in our area, the most significant problem that I have seen since I have been on the council is non-sufficient data, both biological and economic, and now that we are having to use this data for allocations, it is extremely controversial and a real problem.

Another area that we have problems with is law enforcement. In the South Atlantic, it is an area that the major part of—not the major part, but a lot of the Coast Guard's budget, I am sure, is directed toward drug enforcement, and due to the cutbacks in their budget it does leave shortcomings for fishery management.

I would like to point out, the gentleman—I believe from California—made a statement concerning industry input on the councils, and I was led to believe that he felt that unless you were a council member you did not have input.

We have advisory panels that we rely very heavily on in making all decisions in FMPs. One other thing that I would like to point out is that it would help, in our area, if we could get a regional director. That would also—

Mr. STUDDS. The minority will make a note of that. Thank you. Mr. Monsanto.

Mr. MONSANTO. Yes. Well, the two major problems we have, one is enforcement and data collection. Since I think you are going to hear a lot on data collection, I will go with enforcement.

Because I believe if we have the best data available, and are able to make the best management decisions, as long as those decisions, or options are not properly enforced, the FMPs will not be able to accomplish what we hope they would.

As far as enforcement goes, I would like to give you our situation. The Caribbean Council is responsible for Puerto Rico and the U.S. Virgin Islands. Puerto Rico includes the main island of Puerto Rico, several small islands, Vieques, Culebra and Mona Island as well as several other small islands, and to cover that territory there is one NMFS's enforcement officer.

Mr. STUDDS. Are we still bombing Culebra?

Mr. MONSANTO. Yes, we are.

Mr. STUDDS. Well, that rules that out.

Mr. MONSANTO. And in the Virgin Islands it is practically the same thing. We have three main islands—St. Thomas, St. Croix and St. John, and hundreds of smaller islands, and again, we have one NMFS's officer to cover all those areas. So you can see our problem.

As far as what we can do to correct those problems, I think there are two things. First off, we need to have better communication between NMFS and the local enforcement authorities, I guess the combined enforcement efforts, better use of equipment and personnel that are available, and the only other solution is to add more officers to NMFS.

Mr. STUDDS. Thank you. Mr. Paty.

Mr. PATY. Thank you, Mr. Chairman. I think we echo somewhat the same thing, that we have a vast area out in the Pacific, and with the increased fishing pressure throughout our entire area, getting updated data is essential, and of course a part of this whole problem comes about because 65 or two-thirds percent of our catch are tuna, and that is beyond our purview.

And we feel that unless we have this within some manageable data collection area, that we can make meaningful plans from, it is going to present increasing problems throughout the Pacific area.

The other aspect of it, of course, is enforcement, with 1.5 million square miles of area within our EEZ, enforcement, in spite of the efforts of the Coast Guard, and others, is a tough one. I would say those two areas, particularly, and also the drift gillnetting. We think this strip mining of our ocean, even if it is outside the EEZ, is something that is going to have to be addressed.

Mr. STUDDS. Thank you, sir. Mr. Peterson.

Mr. PETERSON. I guess the most significant thing that has happened in the last few years is the Americanization of the resources in the North Pacific, and this has been spectacular. The evolution, the evolution of this new industry is remarkable. At the present time, those fisheries are producing over 5 billion pounds of edible fish.

That is more than half of all of the resources produced in all of the other States. So we have a significant resource in the North Pacific.

Most of that development has occurred within the last 3 or 4 years. Capital investment in the industry, in fishing vessels alone, is something in excess of \$1.5 billion, and approximately half of that has been invested during the last 3 or 4 years. There is a new industry. We have 5000 new people. New jobs. The total industry itself employs over 30,000 fishermen and 16,000 process workers, in addition to the support industries.

So we have an enormous industry. It is new; it is evolving, it is still a moving target. That is the good news. The bad news is, by eliminating the foreign fishing fleets we have lost a source of data. Foreign vessels were required to carry observers. American-flag vessels are not required to carry observers.

Observers are those people who gather the biological information from the catches that our scientists need to give us the best scientific information available. We do not have that.

The observers record the amount of catch of directed fishing and of bycatch. We do not have that. We are blind now. Without proper scientific information, we simply cannot make reasonable decisions for management.

The problem there, of course, if you permit catches too high, the resource will suffer. If you allocate too low a figure, you are leaving fish on the table that should be harvested. Either decision is unfortunate.

We heard something about enforcement, and the enforcement of domestic fishermen. I would bring up the issue of incursions into our zone by foreign-flag fishing vessels, and if you recall, it was a year and a half, or so ago, that this was first discovered by industry.

We have also heard some comment today about the effectiveness of the council. I cannot speak for the other councils, but I think the North Pacific Council does a pretty good job. Attending a meeting, it is a little chaotic, but, at the end, the decisions are fairly reasonable. I think they come out quite good.

We make good use of industry work groups. One of the major problems that is confronting us at this time is bycatch. It is a difficult problem, and I am sure most of you folks back here in Washington have heard about bycatch problems.

But I can assure you, the industry itself is working on that, not with council members involved, or with the council involved at all, but, by themselves, they have high-level meetings. They have hired a Federal mediator to sit in the meetings in order to come up with solutions.

The use of industry groups I think is extremely important in the council process. I think we receive an enormous amount of input in our council process, which is essential.

Public testimony is a wonderful source of information for council members. In any event, I think our council is working well.

Mr. STUDDS. I appreciate that. I know the temptation to tell us what is going well is enormous, particularly if you represent large places like Alaska and Texas, but try to confine your response to what is going badly. As I say, we will have a time to celebrate what is going well, and we always like to hear good news, especially in this city, but this is bad news time. Mr. McHugh.

Mr. PETERSON. I am sorry. I did not understand the question.

Mr. STUDDS. That is quite okay. You answered it. You also gave us the good news.

Mr. McHUGH. Thank you, Mr. Chairman.

Mr. STUDDS. One of the few places in Washington where the good news is not solicited right now. Mr. McHugh.

Mr. McHUGH. Thank you, Mr. Chairman. I believe I heard you say, or mention in the course of your question disappointment, and I have to tell you, with the exception of one group of animals—which we will talk about at a later date—I am not disappointed.

At the time the Act was passed, I personally viewed the—took the idea that it would take about 15 years for this concept to fully mature, and I think that we are well along that track.

I think that we are all—and by “all” I mean this Committee, the councils, the service, and the fishermen, the industry—are all on a learning curve, and I think that as we move up that curve, the mo-

mentum tends to increase. I think that the things that we have, and the biggest need have already been reiterated here—is the need for data, and the need for enforcement. I would point out to you that in the Northeast region there are available, I believe, only 18 agents from Eastport, Maine to the Carolina border, and I think that is something that really has to be considered, Mr. Chairman, because I am inclined to believe that 90 percent at least, of the fishermen, are persuaded toward conservation, and are learning that the councils are not ogres, but are, rather, working in their best interest.

I do believe that there is a group of pirates out there who have no concern other than for what they will take today, and I believe that rigid, harsh, and immediate enforcement on this 10 percent, if they had the resources and the provisions under the law to do it, would materially improve the whole enforcement problem.

At that point, this is all I have to say, Mr. Chairman.

Mr. STUDDS. Thank you, sir. Mr. Schwarz.

Mr. SCHWARZ. Thank you, Mr. Chairman. Like the rest of the council Chairmen, I believe that the ability to provide timely data is the most important need, and that requires funding. I do not believe that there are any major problems with the Act. Mr. Bosco, in his questioning of Mr. Brennan this morning, talked about the Pacific Council's salmon management program. Salmon management requires real-time information. It is very complex management. We have two species concerned, chinook and coho, and money is needed to provide the information required to tell us stock abundance, stock distribution, and stock contribution—combined with that, the competing uses on the ocean and in river, on a real-time basis, on a yearly cycle. Funding for data is the most important problem that we face in order to manage that fishery.

Mr. STUDDS. Mr. Chauvin.

Mr. CHAUVIN. Thank you, Mr. Chairman. Rather than elaborate on what everyone else has said, I want just to agree that we feel that the biggest problem is that National Marine Fisheries Service does not recognize, or it appears that they do not recognize that fishery management should have the highest priority.

Very often, it is difficult for us to get data, and feel very confident about the decisions that we have to make. I recognize that funding is certainly a part of this, but prioritizing is the other part of it. And I want to echo what Ms. Knight said about it would be very good, I think, if we had a regional director.

Mr. STUDDS. Mr. Borden.

Mr. BORDEN. In terms of the New England Council, I would have to say that the number one problem in New England is a lack of enforcement and a lack of compliance with our regulations. The other problems relate to funding and the process by which we obtain funding.

Just to put the issue of enforcement in perspective, as Mr. McHugh already indicated, there are a total of 23 agents. This includes administrators from Maine all the way down to the Carolina coast. If my memory serves me correctly, they have to enforce regulations on somewhere in the order of 50,000 licensed fishermen, if you include all of the tuna fishermen.

There are a multitude of ports. There are huge stretches of the coast in which there is no enforcement presence, or very limited enforcement presence. I think that any rational review of the enforcement and compliance issue would indicate that in fact we need significant—either reprogramming in that area, or additional allocations of funding to increase enforcement efforts.

Mr. STUDDS. I thank you all. So much for my five minutes, but let me just say that there obviously is a recurrent theme, or two or three here. Without exception, you all have referred to the inadequacy of data, and to the inadequacy of resources for enforcement, as something that you all had in common. That is interesting, and I have lots of questions, and I am going to restrain myself for a moment.

The gentleman from California. Mr. Bosco.

Mr. Bosco. Thank you, Mr. Chairman, and I want to thank the panel, too, because we all appreciate the hard decisions that you have to make.

Mr. Schwarz, you mentioned that the Government, apparently other agencies, are asking for your comments relative to their decisions. I think that was part of your—

Mr. SCHWARZ. Yes, sir.

Mr. BOSCO. In terms of the various proposed oil leases, which of course are very controversial in the West, and especially since the Alaska disaster, do you feel that you are being consulted adequately on the impact that oil development might have on the fisheries?

Mr. SCHWARZ. Mr. Chairman, Mr. Bosco, I believe we are given an opportunity to comment on the proposed leases. The answer is how much consideration our comments receive in the Federal agencies to whom we send them. I would say that we are constantly alerted by the industry, especially off the coast of your State, about these things. They provide us good input, they work with us effectively, and we provide our comments to Interior on those leases.

I believe that, basically, they have been responsive to it in the past. I do not believe that there have been any indications of serious lack of consideration, how those exploration activities affect the fishery, but it is something we have to keep on all the time.

Mr. BOSCO. Do you feel that the law should be strengthened in that regard, in that, apparently, a very popular national goal now is protecting the fishery resource. Do you feel you need more legislative authority to do that?

Mr. SCHWARZ. Mr. Bosco, that is a difficult question to answer because what we are talking about, really, is trying to take a council, from its perspective, and cause a Federal agency to take an action.

I am not smart enough to know how the law could be strengthened to give us the ability to provide definitive direction to those agencies.

If I may, sir, one of the problems we have—and that I alluded to specifically—is the fact, as you well know, in California, the Central Valley project is remarketing water leases. It is our contention—and we feel this very strongly in our council—that with all the funds that are being spent by Federal, State, and private interests to rehabilitate habitat and provide fisheries, specifically on salmonids, that the fish themselves in their habitat, and of consider-

ations of the water leasing, are not receiving equal consideration as crops such as rice and other agricultural commodities. And that is where the rub comes in.

And those are the areas where we find two Federal agencies—Interior managing the water, and people interested in fisheries trying to come at each other. I do not have a practical answer.

Mr. BOSCO. Well, I appreciate your remarks, and I was astounded, just recently, when the Secretary of the Interior, without any extended review at all, indicated that that Department is going to automatically renew these 100s of leases. We had expected, given the new importance of the fishery, that that would have been taken into account.

This Committee is authorized, and we are starting to spend, now, \$150 million to restore the Klamath and Trinity Rivers. This year, the Interior Department came out with a plan to take the water out of it. It does not do us any good to spend Federal money to restore these rivers when, on the other hand, they are sending that water down to the Central Valley.

And I would be willing to work with you, and the Chairman, and other Members of the Committee, to see if there is some practical way that we might be able to put a little more teeth into the law in terms of protecting this resource.

Mr. SCHWARZ. And Mr. Chairman, may I make one comment to Mr. Bosco also. We face the same problem on the Columbia River where we have Federal dams which have inhibited and depleted the resource, and there is a reluctance on the part of certain agencies either to spill water, or more importantly, provide bypass facilities for the downstream migrants.

Again, we provide money for Federal hatcheries, but we do not do anything to make sure that those fish that we hatch get down to the ocean so they can be used by other fishermen. I appreciate your offer, Mr. Bosco.

Mr. BOSCO. Thank you.

Mr. STUDDS. The gentlelady from Hawaii.

Mrs. SAIKI. Yes. Mr. Chairman, thank you very much for letting me participate, even if I am here rather in a tardy fashion. I have been involved in the markup of the savings and loans bill which I am going to have to return to.

Mr. STUDDS. Don't tell us about that. We are having a very nice day.

Mrs. SAIKI. So please accept my apologies for not being here sooner. We have with us today, Mr. Bill Paty, who told you a little bit about his background. I think he was a little modest. He has been a leader within our community, very well-respected, and has participated within Government for many, many years.

Being the head of our council, and also being a member of the Governor's cabinet, I really do not know whether he is going to be able to make it out here when we do have testimony on the possible inclusion of tuna in the Magnuson Act.

Mr. STUDDS. In that case we may have to go there.

[Laughter.]

Mrs. SAIKI. Oh, you stole my punch line, Mr. Chairman. But nevertheless, I am still going to pin you down.

First of all, may I ask Mr. Paty whether he will be able to attend the hearings, when we hold them here?

Mr. PATY. Well, if it will bring the Subcommittee out to Hawaii, Mrs. Saiki, I think perhaps I would be unavailable.

[Laughter.]

Mr. PATY. I would say, in all seriousness, that it is a matter of real concern to us, and we would make every effort to attend, but we feel that the committee, very honestly, would benefit from having exposure to having more people from the Pacific arena be on hand, the actual working people out there, to give them a feel for their concerns.

Mrs. SAIKI. That is exactly the invitation I—we did not cook this up, Mr. Chairman. That is the invitation from a member of the cabinet, who is also the head of our Western Pacific Council, to ask the Subcommittee to make a trip to Hawaii to look at the 1.5 million miles of our EEZ. Our problems are not just with tuna, as Mr. Paty outlined in his testimony. Our concerns are for the future, and what the fishing industry is going to be like in the future. Also conservation needs, as we look at mining of the ocean floor.

So, rather than go into a specific question affecting tuna, or the needs for statutory changes on the Magnuson Act, I would like to defer all of that until this Subcommittee comes to Hawaii, and you will hear it directly from our citizens as well as from our Government leaders.

So I am not going to ask any questions. We would like to put on the record this official invitation, Mr. Chairman.

Mr. STUDDS. The gentlelady is ingenious in her genesis of ideas. If she can be equally ingenious in her genesis of funding—

Mrs. SAIKI. You are much better at that than I.

[Laughter.]

Mr. STUDDS. How many high-level sets of lips we have to read in order to get there.

Mrs. SAIKI. Just one. Yours.

Mr. STUDDS. We will do our best. I thank the gentlelady. The gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Mr. McHugh this. I heard what you said about—and I guess it was repeated by almost everyone on the panel—about problems with data, or lack of data. In your statement, you specifically say that the Mid-Atlantic Council is extremely concerned about a continued decline in available resources to obtain accurate data with which to manage our fisheries.

And then you go on to say that the council is also in immediate need of required information to complete a plan on bluefish, one of the most important recreational species.

Well, I have been getting a lot of complaints about the proposed bluefish management plan, and I understand that, in February, the council adopted this possession limit of 10 bluefish per recreational fisherman.

Given what you are saying in your statement about the lack of data, I do not understand how the council has gone ahead with that proposal, when you are admitting, or I guess the council is admitting, that they really do not have the data.

Mr. McHUGH. First of all, Mr. Pallone, I would point out to you that development of the bluefish plan in its present mode is not totally a council plan. It is being done in conjunction with the Atlantic States Marine Fishery Commission, and as a matter of fact, the Chairman of the Plan Development Committee is from your State—Bruce Freeman.

When we say "lack of data," we do not mean zero data. We mean that we have enough to satisfy the provisions of the Magnuson Act, that requires the best scientific information available.

We do not have a program which would assure, on a continuing basis, that that fishery will be monitored, so we know whether the plan is successful or unsuccessful, whether it needs fine-tuning, whether that proposed bag limit of 10 can be raised to 15 or reduced to five. There is where our problem is. It is not in general groups of data.

But if I could switch for a minute, and address the Atlantic mackerel, for example. We, for 5 years or so, had a Polish vessel over here that we paid off in fish to do research for us, and Atlantic mackerel only, and it was very significant, very productive, and very valuable research. In their wisdom, the Northeast Center decided to terminate that agreement.

Now we, as I noted to you before, are in the process of attempting to bring that up to full U.S. utilization, and we are advised by the Northeast Center that they have neither the resources nor the time, or the people to keep that data current.

Mr. PALLONE. I do not mean to cut you off, but I know we have a time limit. The problem is there clearly. I have not seen any information, and certainly the fishermen that I speak to say there is not really any significant information, to back up the need for a limit on bluefish.

You say that there is some data, but there is not a lot. We need more. You go back to that standard which Mr. Brennan mentioned about the best scientific information available. But there does not really seem to be any basis, that anyone has been able to present to me, to show that there is any diminution, depletion of this resource. None, or nothing of any significance. Everyone keeps saying that, and so the council starts to lose its credibility. I do not know if this is just true with bluefish. It might be true with some other species, as I mentioned, striped bass—when they go ahead, without really having sufficient backup data.

I do not know whose fault it is, but it seems to me that if the data is insufficient, the best thing would be not to have a plan, rather than to say that based on what we have, we will do something.

Mr. McHUGH. Well, Mr. Pallone, the data for that decision, when it is made in its final form—whether it be five fish, 10 fish, or what it is—comes from the testimony of the general public who are a part of the plan development process in public hearings, and that is a recommendation that comes from a significant portion of the recreational fishery. I am a recreational fisherman.

I think some of the testimony we have had, and documented with photographs, is a discard of excess bluefish along the highway, and in dumpsters, and this sort of thing, which is not a conservation ethic by any stretch of the imagination.

The councils many times find themselves in a position of having to reconcile differences between the commercial and the recreational sector in order to move a reasonable management plan along, and I would say to you that, to a certain extent, that is a part of the motive behind that particular bag limit.

I do not see any problem with it. The plan presently provides—the way I last remember seeing it—for a cap on the commercial fishery. Past efforts to develop a bluefish plan brought the protest from the commercial sector—why are you penalizing us and the recreational fishery can catch all the fish in the ocean?

Mr. PALLONE. I know there has been some testimony about bluefish being discarded and rotting. I am sure there are isolated instances of that, but that, to me, is not a scientific basis for saying there is a need to manage a species. The fact that some fish are being discarded, or they are seen at the roadside, is not in my view the scientific basis that is understood under the Magnuson Act, required to justify these types of limits. I do not follow that at all.

Mr. McHUGH. Well, it certainly is a conservation measure because it is an edible fish, Mr. Pallone, and the philosophy deriving directly from the problem that you are having with reconciling your views with it, I cannot really help you with. I am quite confident that what will be presented to the Secretary for review and approval will be well within the framework of the law.

I might point out to you, that not too long ago, with king mackerel in the South Atlantic and Gulf, there was no bag limit as far as recreational fishing was concerned, and when it was determined the stock was in trouble they established bag limits and heard the same kind of protest down there, as you are hearing from your constituency. But now that the law has been implemented, why, everybody lives with it and appears to be very happy.

Mr. PALLONE. Could I ask one more question?

Mr. STUDDS. Very quickly, as long as it is not on bluefish.

Mr. PALLONE. You heard about the proposal of having the regional councils impose fees. Is that something that the Mid-Atlantic Council supports? I guess it was Congressman Young's proposal—it was discussed by Mr. Brennan—to have the regional councils propose fees.

Mr. McHUGH. Yes, sir.

Mr. PALLONE. Is that something that the Mid-Atlantic Council supports?

Mr. McHUGH. We support that.

Mr. PALLONE. You do?

Mr. McHUGH. We support that. That is a complex issue, but it is quite obvious from the testimony you have heard, that we have got to fund these data collection and scientific necessities from some place.

Mr. PALLONE. Thank you, Mr. Chairman. Thank you.

Mr. STUDDS. Let me just caution the gentleman. I realize that any constituent who is unhappy, for any reason, is, by definition, a problem. But the bluefish, as the gentleman I am sure knows—average what?, 8, 10, 12 pounds. Ten of those a day is at least a 100 pounds of fish for a recreational fisherman. It ought to feed most recreational fishermen that I have ever seen, and their extended families, for a very long time.

I would also point out to the gentleman, that the bluefish that are brave enough, and smart enough, and strong enough to get past New Jersey are on their way to Cape Cod.

[Laughter.]

Mr. STUDDS. The gentlelady from Washington.

Mrs. UNSOELD. No questions, Mr. Chairman.

Mr. STUDDS. Let me say to the panel, first of all, thank you. I have lots and lots of questions, and I also have some that might reasonably be interpreted as parochial, but I will not ask them now.

I understand that all of you, especially given the fact that you have traveled as far as you have, are going to be available to staff for questioning later. All members should know that, whether they themselves, or their staff want to participate. We very much appreciate that.

We have a lot of work to do. I must say that even in this frustratingly brief time, I have learned a great deal, especially about what you have in common in your testimony.

We will begin regional hearings around the country starting, quite logically it seems to the Chair, in Boston on Monday next, and we will then, in series, be visiting all the coasts. Whether we get as far as that suggested by the gentlelady from Hawaii remains to be seen.

But I want to thank you all very, very much indeed. I hope you get a chance to eat something, perhaps bluefish, between now and your reconvening with the staff. We will go to panel number three. Thank you.

If you can make way for panel three as gracefully as possible, we would appreciate it.

Our final panel is probably—well, whatever else you are, you are very patient. I appreciate your putting up with a schedule that was inevitably longer than we had thought. Because of the imminent possibility of the bells ringing again, I am going to ask you to do the impossible, which is to confine your oral statements to no more than five minutes, if you possibly can. I know some of you have much longer statements in writing. They will appear in their entirety in the record.

Again, I apologize for the frustration, but it may be the only help we have to hear the most important things you have to say. We will start with Mr. Lynn Greenwalt of the National Wildlife Federation. Mr. Greenwalt.

STATEMENTS OF A PANEL, CONSISTING OF LYNN GREENWALT, VICE PRESIDENT, INTERNATIONAL AFFAIRS, NATIONAL WILDLIFE FEDERATION; RICHARD GUTTING, JR., VICE PRESIDENT FOR GOVERNMENT RELATIONS, NATIONAL FISHERIES INSTITUTE; AND BENJAMIN T. HARDESTY, PRESIDENT, DUNHAM'S SPORTS OUTFITTERS, INCORPORATED, COLUMBIA, SOUTH CAROLINA.

Mr. GREENWALT. Thank you, Mr. Chairman. I am Lynn Greenwalt, a Vice President of the National Wildlife Federation. I am pleased to come before this Subcommittee and represent the 5.1

million members and supporters of the National Wildlife Federation.

The Federation supports the reauthorization of FCMA. We have been involved in it for many years, and we are committed, as we know you are, to making it work better.

The Act has done two things since its beginning. It has Americanized the harvest of marine fish from the EEZ and it established this remarkable council mechanism. The results have been impressive in terms of economic benefits to the Nation.

Speaking of the economics, Mr. Chairman, I must make a correction. On page two of my formal statement in which I became mesmerized by "millions" when it should have been "billions," as Carl Sagan would say—billions of dollars. I apologize, Mr. Chairman, for that error in the text.

However, the future of marine fisheries is not as reassuring as the dollar amounts might indicate. The resources that FCMA was to protect are declining dramatically and something must be done.

Simply stated, as a Nation, we do not properly protect habitat for marine fishes, and we do not practice conservation of fish stocks. This combination of shortcomings can be fatal to this Nation's marine fishery resources.

We let habitat be degraded, or lost, and little is done to prevent it. We overharvest fish stocks which are already reeling from habitat deterioration, and the result is a steady decline in the return on effort.

We fish too hard, and too long, on too few fish. We recommend, then, the addition of fish habitat conservation provisions to the "Findings, Purposes and Policy" section of the Act, and we suggest, very strongly as a matter of fact, including the concept of no net loss of habitat as a goal for the Act.

This would stimulate us all to recognize the importance of habitat to fish production, and therefore the need to conserve habitat as the foundation for the successful future of marine fish management.

We also believe that the National Marine Fisheries Service, through the Secretary of Commerce, should have somewhat greater authority to insist on the mitigation of fish habitat loss brought about by the activities of other Federal agencies.

The concept of mitigation is not a new one, and has been a part of terrestrial habitat protection for some time.

The habitat provisions in FCMA have been used well by some councils, but all need the support and direction of the Congress. Further, the addition of staff expertise in habitat problems and their resolution would be helpful to all the councils, we believe.

The question of overharvest is equally important, and its resolution will not be easy or pleasant. It will require our making some rules that will affect people's lives and livelihoods, and we must agree to stand by those rules.

The National Marine Fisheries Service and the councils should be directed to use existing authorities to reduce overharvest and restore depressed stocks. For years, we have attempted to divide a diminishing resource among a large number of harvesters.

The result is disappointing to those who fish for a living, and it is leading to the certainty of increasing disappointment unless

action is taken soon. Overharvest and habitat degradation inevitably must combine to result in disaster for everyone, especially those who come after us.

Mr. Chairman, these form the heart of the National Wildlife Federation's comments on the reauthorization of FCMA. We do recommend that somehow, in some way, there ought to be a determination about what the true funding needs of the National Marine Fisheries Service and the councils are, and those funds provided.

Clearly, without money, there is little reason to expect improvement in performance, regardless of the content of the FCMA.

Finally, we recommend the repeal of the FCMA exemption for tuna. The council should be a part of managing these fish, and play a role in behalf of the U.S. in international tuna management. We have learned a lot in 13 years of the FCMA and it is important to continue with this legislation.

It needs to provide some additional tools for fish managers, and it must offer the strongest possible support for some difficult and necessary actions to assure the perpetuation of fish habitat, and an acceptance of the need to avoid dangerous overuse of a valuable, and somehow, a very fragile natural resource.

Mr. Chairman, I would be pleased to answer any questions you may have.

[The statement of Mr. Greenwalt can be found at end of hearing.]

Mr. STUDDS. Thank you very much, Mr. Greenwalt. Next, Mr. Richard Gutting of the National Fisheries Institute. Mr. Gutting.

STATEMENT OF MR. GUTTING

Mr. GUTTING. Thank you, Mr. Chairman. Our membership in the Institute is nationwide, and our member companies are engaged in all aspects of the commercial industry. As you have been hearing, perspectives on the Act vary from region to region, so we tend to get caught in the cross-fire of different priorities and perspectives, just like you.

Despite the difference of views, I can make a few general comments. First and foremost, from the commercial fishing perspective the Act has been terrific. Shortly after it was passed, catches went up, income went up, people had a sense of optimism. They invested. Modern fleets were built. Shore-based processing plants were built.

As a result of all of this, the foreign fleets have been replaced, for all practical purposes. These are things we had hoped would happen. These are the reasons why we supported the Act, and we thank you, again, Mr. Chairman, for being out front early on.

We did not agree with you when you started out, but you showed us the way and we were there with you at the end.

The challenges we face today, however, are different, and I think you have heard from previous witnesses about some of those challenges. The mood is changing in the commercial industry, a change from optimism to one of caution and high frustration in some instances.

Warning flags are going up, and I think we need to be aware of these. First, several of the major stocks are depressed, and despite years of regulation we have been unable to rebuild them. Second,

catch-per-unit-of-effort in some of the major fleets is declining. Catch-per-unit-of-effort has its ups and downs, but the long-term trend is downward.

And something people do not often point out is, consumer prices are going up at a rate much, much faster than for competing meat products, and that has got to have some point of ending.

Also Mr. Chairman, you have heard about the need for data, and witnesses have talked about funding. Well, the Institute has argued before Appropriation Committees for more funding, but I went back and looked at the numbers, and I found something very interesting that the Subcommittee should think about.

The cost of fishery management is escalating. In 1981, we invested \$41.85 for every ton of food produced out of our zone. Last year, we invested in fishery management \$66.66 per ton. When these numbers are adjusted for inflation, that is a 22 percent increase in 7 years.

So, from a food production standpoint—and I realize the Act has different perspectives—but from a food production standpoint, the American taxpayer is getting a poorer and poorer return on his investment.

Consumers are beginning to balk. We have had 6 or 7 years of increasing per capita consumption in the United States, and all of us have benefited from it. That increase is turning downward now.

Consumers are expressing concern, also, over whether the food we are producing in these fisheries is safe and wholesome, and while I think it is, and we have so testified, our fishery managers are not equipped to deal with this problem of the 1990's.

We need to look at fishery management in the context of what the consumer is saying he needs. In short, Mr. Chairman, from a commercial perspective we think reforms are needed. What is unclear, and certainly debatable, is whether these reforms lie in the language of the Act, or the way it is being enforced and implemented.

I would highlight three areas of intense concern, Mr. Chairman. The first has to do with membership on the councils. I think we need to restructure—I will be very blunt about it—restructure membership on the Gulf of Mexico Council and the South Atlantic Council.

You had a Boston Tea Party years ago, something about taxation without representation. That is the sense of the commercial industry in the Gulf. No representation. Why is it, one of the major fisheries in the United States, the shrimp fishery, has one shrimper on that Gulf Council?

Why is it that the State of Florida, a major State producing seafood in the United States—I think it is right up there in the top 10—not a single, not a single representative of the commercial industry.

We have heard a lot about enforcement. As the Coast Guard said, enforcement starts with good rules, and good rules, it seems to me, require the involvement of those being regulated, and that is what we have lost in those two councils.

That problem needs to be addressed. All of the commercial groups in that area have come together, and you will hear more about that, I am sure, in subsequent hearings.

With regard to enforcement on the high seas, you have heard about salmon, and you have heard about driftnets. This is of immediate concern at the national level. During earlier questioning we heard a lot about boarding vessels.

Mr. Chairman, I do not quite understand why we talk so much about boarding vessels. The answer, it seems to me, is pretty straightforward. These nets sit in the water. They have transponders. They are very easy to find.

Go up to the net; you are not boarding a vessel; pull the net out of the water, look at what is in it; if it is a U.S.-origin salmon it is contraband. It should be seized, the net should be taken and brought back, and if the owner wants to come and claim it, then let's hear what that net was doing in the water where it was.

No vessel is boarded. If we claim jurisdiction over salmon, as the Congress said we did, let's start enforcing it, and bring the people operating those nets to the table, and hear what they have to say.

Finally with regard to the budget. You have heard a plea for more money. Before we rush off and ask for more appropriations, I think the Committee should take a very hard look at the current distribution of funding among the councils.

If you look at the number of fishermen being regulated, the value of production, and the volume of production, the geographic distribution of our current investment is out of whack. Some councils are facing massive responsibilities and are getting short-changed.

Other parts of the country seem to have a disproportionate share of resources and are spending an unusually high amount of money. Don't start putting more money into it until you are sure your house is in order, and from the commercial perspective we have a lot of questions about what is going on.

And with that, Mr. Chairman, I will stop.

[The statement of Mr. Gutting can be found at end of hearing.]

Mr. STUDDS. Thank you very much, Mr. Gutting. Mr. Benjamin Hardesty speaking for the recreational industry.

STATEMENT OF MR. HARDESTY

Mr. HARDESTY. Mr. Chairman, I am Benjamin T. Hardesty, President of Dunham's Sports Outfitters headquartered in Columbia, South Carolina.

Mr. STUDDS. Do you want to move that mike a little closer, sir.

Mr. HARDESTY. Yes, sir.

Mr. STUDDS. Thank you.

Mr. HARDESTY. I represent the Sport Fishing Institute and the American Fishing Tackle Manufacturers Association.

These industry associations represent the manufacturers and distributors of goods and services used by the recreational fishing community.

These manufacturers and distributors have a direct economic reliance on the resources managed under the Magnuson Fishery Conservation and Management Act. I have been in the sport fishing industry for over 30 years. I served as a charter member of the South Atlantic Fishery Management Council from its inception, in 1976, to 1981, and chaired that council in 1979.

According to the 1988 Gallup Poll, sport fishing was the second most popular recreational activity among American adults. People 12 years of age, and older, spend approximately 173 million angler days on the Nation's marine waters in 1985. That is nearly three times as many marine angling days as were taken by the same age group in 1955.

Sport fishermen harvest an enormous quantity of fish for food. The total economic impact, including multiplier effects, of marine recreational fishing in 1985, was \$13.6 billion. A total of 285,724 jobs were generated, with wages and salaries of \$3.5 billion.

Unfortunately, most marine fish stocks of great importance to the recreational fishing industry have declined, and continue to decrease in abundance. A recent compilation from NOAA provides damning evidence that many stocks of essential importance to the recreational fishing industry continue to be overexploited. Groundfish and flounders in the Northeast; snapper-grouper, red drum, reef fish and mackerels in the Southeast and Gulf; and certain stocks of salmon in the Pacific Northwest.

The recreational fishing industry is fundamentally concerned with the deficiencies of the management system under the Magnuson Act. The Act has failed to provide for wise resource conservation and effective management, and instead, has allowed continued exploitation toward growth and recruitment failure.

To effectively terminate the continued overexploitation of the public's fisheries assets, the 1986 NOAA fishery management study proposed to separate conservation decisions from the allocation process. This functional split is the wisest management regime for marine fisheries. Resource conservation must be kept independent of user-oriented allocation decisions.

We support the NMFS's proposed strengthening guidelines to the Act's national standards. The new guidelines are designed to enhance stock conservation objectives. Should the guidelines fail in this regard, we support legislative modification of the section 301 national standard.

Such modification should specify the structural separate of the conservation and allocation aspects of management. As one means of reducing the overexploitation pressures on limited marine fisheries, we recommend that the councils used limited entry as a management tool.

This management option should not be statutorily inhibited in marine fisheries management plans. We support strengthened habitat conservation considerations in the fishery management plan process.

Better data on habitat conditions will materially assist decision-makers with projecting future health of many key species. The statutory exclusion of management authority over highly migratory species should be eliminated. Such an action would permit U.S. policies to conform to the policy of other fishing nations and allow the U.S. management of highly migratory species within the U.S. exclusive economic zone.

The fishery management councils are seriously handicapped in obtaining factual and meaningful data on the recreational catch and effort. The marine recreational fishery statistics survey is used by the councils for recreational effort and data to achieve FMP ob-

jectives. This survey does not provide the needed data with a reasonable degree of accuracy.

In order for recreational fishing interests to receive their fair share of marine fishery stock allocations, it is imperative that NMFS be directed, and sufficiently funded, to redesign and implement a recreational statistical data system that provides the fishery management councils with timely and factual recreational use and harvest data.

We support and recommend the following changes to the Act's specifications for council appoints and service.

One. Limit of not more than two consecutive terms of appointment for obligatory and at-large council members.

Two. No State shall have more than one State employees as a member of one council.

Three. It is a conflict of interest that the designed NMFS member on each of the councils should be a voting member. We recommend that the designated NMFS member be non-voting.

To summarize, Mr. Chairman, in addition to the technical amendments I have just addressed, we recommend, one, that NMFS be directed and funded to strengthen the biological, social, and economic data bases that are essential to proper management.

And two, amendment of the Act to include the management of highly migratory species. And finally, three, we recommend also that Congress closely monitor and ensure that the Magnuson Act does not continue to promote growth of overfishing.

Mr. Chairman, on behalf of the recreational fishing industry, I want to thank you for the opportunity to present our comments.

[The statement of Mr. Hardesty can be found at end of hearing.]

Mr. STUDDS. Thank you, sir. You have been commendably restrained in your proximity there. We appreciate that. The gentleman from California?

Mr. BOSCO. No questions, Mr. Chairman.

Mr. STUDDS. The gentleman from New Jersey.

Mr. PALLONE. Thank you, Mr. Chairman. I just wanted to ask Mr. Gutting a question. You talked about the need, within the provisions of the Act, to deal with safety concerns with regard to seafood, and also about environmental concerns.

I am not sure that I understood, completely, what kind of regulatory mechanism you had in mind—whether that was something that would go to the Act itself as an amendment, or just the way it is being carried out.

Mr. GUTTING. There are two aspects to your question, both equally important. As you know, many of the most publicized concerns about the marine environment and what is happening to the seafood are near shore, within State jurisdiction, and in fact a number of States along the Atlantic coast have closed certain areas to fishing because of these concerns. Closed them to commercial fishing.

We do not have that situation beyond State jurisdiction. The councils, while they manage fisheries, tend to manage them in terms of maintaining a population. I am not sure, I am not altogether clear, the nature and extent of their authority to open areas or close areas out of concerns over the safety of the seafood. That is one aspect of this problem.

Certainly I am not sure we are monitoring the production from that perspective, from the consumer's perspective of safety, the way we should be. So that the net result of all of this is when concerns are raised—for example—over an ocean dump site, or some other activity far off shore, there does not seem to be a mechanism set-up, someone accountable and responsible, who can stand up and say, no, here is the system, here is how we do it. It is under control.

The other aspect that I had in mind in making those comments has to do with getting at the root cause of the problem which is the environmental pollution, in the first place, and this is something that we have discussed, at length, over the years.

The authority of the councils has been broadened in a series of amendments. They do have the authority to make a comment to Federal agencies who are permitting activity.

In my own mind, I am not sure that the councils are really taking advantage of the authority they already have, whether that is the problem, or whether we need to strengthen that language, and somehow give them a greater role to play.

Quite frankly, I think they have their hands full right now just managing the stocks.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. STUDDS. The gentlelady from Washington.

Mr. UNSOELD. No questions, Mr. Chairman.

Mr. STUDDS. In that case, Mr. Greenwalt, Mr. Gutting, Mr. Hardesty, I really want to thank you. You have been subjected to an unduly long day, and we appreciate both your patience and your contributions.

I suspect in the case of each of the three of you, and the people for whom you speak, that we will be wanting to draw on your knowledge and resources further as we get down the road here, and I very much appreciate your time.

The Subcommittee stands adjourned.

[Whereupon, at 1:32 p.m., the Subcommittee was adjourned, subject to the call of the Chair.]

REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

MONDAY, MAY 8, 1989

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES
AND WILDLIFE CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Boston, Massachusetts

The Subcommittee met, pursuant to notice, at 10:36 a.m., in Gardner Auditorium, State House, Boston, Massachusetts, Hon. Gerry E. Studds (chairman of the subcommittee) presiding.

Members present. Representatives Studds, Young, Brennan, Saxton.

Staff present. Bill Woodward, Jeff Pike, Rod Moore, Joyce Sacco, Lisa Murray, Jim McCallum, and Su Sponaugle.

Mr. STUDDS. The Subcommittee will come to order. I think some of the Members have opening statements. I am going to make a brief one and then introduce my colleagues who are here. We will try to proceed with some semblance of order.

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

We meet this morning to continue consideration of H.R. 2061, a bill to reauthorize the Fishery Conservation Management Act of 1976. Some of us here are old enough to remember that.

We come to New England because New England along with Alaska is where the greatest chapters in the history of American fishing have been written. For centuries, the sons of New Bedford and Chatham, Gloucester, and Point Judith, Boston, and Portland, Nantucket and Provincetown have endured great personal hardship and danger to earn their living from the sea. Fifteen years ago, they led the fight to reclaim American fisheries from European and Soviet factory fleets that were ravaging fishery stocks in Georges Bank and elsewhere along our coasts. In so doing, they asserted the right to determine their own destiny, to manage American fisheries for American fisherman for the good, not only of their own generation, but of generations to come.

Thirteen years have passed since that battle was won and the 200 mile limit became law. The once small and aging New England fishing fleet is now among the most modern and efficient in the world. For five years in a row, New Bedford led the nation in value

of fish and shellfish landed. Even today, scallop landings are rising and lobster catches are high.

But there is another part of the picture. More and more, the seas northeast of Cape Cod swarm not with the majestic fish that gave the Cape its name, but with dogfish and skate. Landings of our bread and butter species—cod, haddock, and flounder—are half of what they were a decade ago, one quarter of what they were during the 1960s. Today, our fisherman are fishing twice as long and twice as hard to catch half as many fish as they did at the start of this decade. And according to the scientists, the prospects for the future are worse.

We are, in short, bankrupting Georges Bank. The key word in the 200 mile limit law is conservation. But today, despite good intentions and lots of hard work, we are not conserving New England groundfish stocks, we appear to be destroying them.

The reasons include over-fishing, lack of enforcement of our fisheries laws, pollution, and eight years of hostility, frankly, towards Federal fishery research on the part of the preceding Administration and, thus far, the new Administration, as well.

Our Subcommittee comes to New England not with answers, but with questions. And the fundamental question is whether current fishery management efforts will be enough not just to stop, but to reverse, the decline in groundfish stocks off our coasts.

If the answer to that question is no, then we must consider whether alternatives that have been rejected in the past as too extreme or too difficult or too expensive can still be avoided today.

The recovery of our groundfish stocks would generate an estimated \$570 million annually in new economic benefits for New England. That is a goal worth fighting for. And it is a goal that we must achieve if the future of the New England fishing industry is to be as glorious as its past.

I want to take this occasion to welcome some of our more distinguished colleagues. Those of you who do not work in Washington do not understand the extent to which all of our colleagues are distinguished and are referred to regularly as such by one another. In this case, we genuinely distinguish colleagues. Distinction almost inarticulable in some cases.

I want to introduce, first of all, the Ranking Republican Member, the Minority Member, of our Subcommittee a very good friend who goes back in this Congress, although, he does not like to admit it, as far as I do, having been elected in the dark ages prior to the enactment of the 200 mile limit law. A gentleman whose district is impressive by any standards. I complain frequently about the length of time it takes me to drive from Provincetown to Hull. It does not impress my colleague from Alaska, who represents the entire state. You want some conception of why that distance in Massachusetts does not impress him, this gentleman has five time zones in his district. And he is an invaluable ally in our fight over the years, first the 200 mile limit and, in the succeeding years, to preserve it and the fisheries, which are as important to his people in Alaska as they are to ours in New England. And it is a great pleasure to welcome him to what I understand is his first daylight visit to Boston. You will have to explain that. Congressman Don Young of Alaska.

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE
FROM ALASKA

Mr. YOUNG. Thank you, Mr. Chairman. It is a pleasure to be here in Boston today to listen to the concerns New England fishermen have about fishery conservation and management.

This is my first daylight trip to New England, Boston for this purpose. I am sure it will be an informative one for myself.

Mr. Chairman, I want to thank you for your willingness to return that same interest by returning to Alaska this summer. It is ironic, and I always enjoy this, we have many Congressmen visit Alaska in the summer, not many in the winter. But we do have a great interest in Alaska—

Mr. STUDDS. You told us not to come.

Mr. YOUNG. That is true. As I recall, the summer trip will be your first visit to Alaska fishermen. It will be the first hearing in Alaska on the Fishery Conservation and Management Act since it passed. I hope our mutual visits will be equally productive for both of us.

For the other Members and the witnesses, who are here today, I want to point out that Congressman Studds and I were elected to the House at the same time. We have served together on the Merchant Marine and Fisheries Committee from the very beginning. And in fact, this is the second Subcommittee that the Chairman has chaired. He was the Chairman of the Coast Guard Subcommittee, a very important committee, and then chose the Fish and Wildlife Subcommittee where I have held the position of Ranking Republican Member.

Although we occasionally have some disagreements, not many, we both believe very strongly in the importance of the commercial fishing industry, the need for proper management. Congressman Studds has worked hard for the New England fishermen, as I have worked hard for Alaska. We have mutual interests in the fishing industry.

For those of you in the audience, you can be assured that this man represents the fishing industry for New England states because his interest and his love and his heart is in this industry. Mr. Chairman, that is all I have to say for the moment. I am here to listen and to learn.

Mr. STUDDS. If you are going to talk that way, you can take as long as you would like.

Mr. YOUNG. I will. If your fishing industry is anything like mine, I expect to listen long, I expect to learn. It is good to be here to see what the good points and bad points are about the MFCMA. I am looking forward to getting good information because we must renew the Magnuson Act this year or this session. This is an important part of the Merchant Marine and Fisheries Committee.

The industry, as it has been Americanized, we cannot lose sight of the term management. We do not like to manage from the halls of Congress, but we would like to have the oversight and renewal of this good act that has really been the bright spot in the Alaskan future, as far as the continued renewable resources in Alaska. Thank you, Mr. Chairman.

Mr. STUDDS. Thank you, Don. I want the audience to be very careful not to appear to be staring at the Congressman from Alaska. He asked if he had a feeling that no one here had ever seen a Republican before. I said not at all. The presence of himself and the Gentleman from New Jersey, whom I will introduce in a moment, has, in fact, doubled the population of this building.

Mr. YOUNG. Mr. Chairman, the also—the Chairman and I have worked very hard on the endangered species act. And we do think we are qualified for that.

Mr. STUDDS. The Gentleman will feel much more home with my constituency. Let me introduce next a distinguished Congressman, a former Governor of one of our New England states, Joe Brennan of Maine.

Mr. BRENNAN. Thank you very much, Mr. Chairman. I am delighted to be invited down here to Massachusetts. As you know, Massachusetts was part of Maine until 1820 when——

Mr. STUDDS. The Governor's time has expired.

Mr. BRENNAN. When we let you go on your own you have not done too badly.

STATEMENT OF JOSEPH E. BRENNAN, A U.S. REPRESENTATIVE FROM MAINE

Mr. Chairman, I do want to commend you for holding this field hearing. And I know chairman are always commended for holding any hearing. I really mean this. Because the more I read about this, the more alarming I find it the depletion of the fishing stock. And I would like to read a quote from an article that appeared in the Boston Globe Friday that, I think, sums up a lot of this, authored by Gerry Studds. And the quote is; "The abundance of our off shore fisheries is one of the greatest gifts nature has ever bestowed. No one know better than our fisherman that we betray our heritage and our future if we fail to preserve the value of that gift."

And I guess that is why we are here for this morning. That is our responsibility. It is very, very important to my state of Maine. The fishing industry is vital. And if it were not vital just in regard to the economics, I think it is very much part of our heritage, part of the very fabric of Maine. And reading over the memoranda before coming here and thinking about the tremendous problem that exists, I am really looking forward to this hearing to find out just what we can do to stop that decline and reverse it.

Mr. STUDDS. I thank the gentleman. I am very, very pleased that he has joined us. Now, let me introduce another, needless to say, distinguished Republican, Minority Member, of this Committee, Jim Saxton of New Jersey. Welcome.

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. SAXTON. Thank you, Mr. Chairman. It is a pleasure to be here with you in your home state, almost your home town today. I want to say first that the value of hearings like this is great as we meander through the halls of Congress in Washington often times we do things which do not make a lot of sense.

And one of the ways to keep us on the straight and narrow track is to be able to get out and hear directly from the people who are affected by the laws we pass. And, of course, this morning Mr. Young had referred to the fact that often times we try to manage from the halls of Congress. Today, our effort is not so much to manage from the halls of Congress but to get direct input from you and those who are affected by that which we do.

The Magnuson Fishery and Conservation Act, obviously, is a very important part of the program that affect fisheries throughout the coast United States. Enacted in 1976 as a result of the fact that just prior, in the decade prior to 1976, the foreign fisherman doubled their take in our waters, while our domestic take had dropped significantly.

So, it is as Congressman Young has pointed out very important that we authorize this act and do it in as quick of fashion as we can with as much dispatch as we possible can.

Mr. Chairman, you mentioned this morning a number of factors which effect our fisheries. And I cannot help but sit in a situation like this and say how right you are. You mentioned the fact that this is a conservation act and it is.

And you and I, and Mr. Young and Mr. Brennan are oftentimes in Washington D.C. dealing with the other part of this problem, which you mentioned is the environmental part. It occurs to me this morning that while we are here to talk about the conservation act, that it is well to mention and to keep in mind throughout the time that we are testifying this morning, that much of our fisheries resource depends so heavily, as it does throughout the west coast and Alaska, the Gulf of Mexico, and on the east coast, places like Chesapeake Bay, on the environmental problems that we have had. And those of us who serve on this Committee recognize that very, very well.

This morning, as I got on the airplane to come here, I stopped at the newsstand and bought a copy of the Philadelphia Inquirer. The editorial in the Philadelphia Inquirer was talking about cleaning up at home. Apparently, in Washington this week, there were more than 1500 scientists and government officials from all around the world who met to talk about the problem of global warming and the environment on a global basis.

Let me just read one paragraph from this editorial, which I think strikes directly at what we are here to talk about today, or at least one aspect of it.

It says, "At last weeks conference, a recurring message was this: if America wants to take the leadership role in global and environmental problems, it must first clean up its own house."

And I think that that is what this Committee is all about, part of what this act is all about, and certainly what the activities that we are involved in and the very important mission that we have to protect our fisheries resources are all about.

Again, Mr. Chairman, I want to congratulate and commend you for calling us together here in Boston this morning.

Mr. STUDDS. Thank you, very much. Let me just observe for folks whose view of the Congress from a distance, among other things, is a bunch of partisan bickering. This Committee for years and years and years, as long as we have served on it, has been a shining ex-

ample of approaching things in a spirit of anything other than partisanship. There is nothing very partisan about a natural resource. And I, for one, am very, very grateful for the opportunity of serving with men and women of both sides of the aisle who see that as the first priority always.

We are expecting two more Members of Congress here. One from our own state, Congressman Nick Mavroules and—I guess the reason this gentleman is not here is yet, Congressman Doug Bosco of California, is here somewhere. He had a more difficult path here than anyone except for Representative Hynes, who I am about to introduce in a moment. Doug Bosco flew all night to get here from California, to Washington, from Washington to here, and somehow has disappeared between there and here. But that was an extraordinary effort. And I want you all to be very nice to him when he comes in. Somebody open the door, pull out a chair, and put it back. Well, I will introduce him when he comes. And then you know something about his district.

Now, the only person who had a more difficult time getting here is Representative Hynes, who had to drive from the South shore, I assume, this morning. And I want to recognize now, just to show you the distinctions are not confined to the U.S. Congress, a gentleman who is in my own constituency and a good friend and a fine legislator, Representative Frank Hynes of the Town of Marshfield.

**STATEMENT OF HON. FRANK HYNES, STATE REPRESENTATIVE,
FOURTH PLYMOUTH DISTRICT, MARSHFIELD, MASSACHUSETTS**

Mr. HYNES. Thank you, Mr. Chairman, and Members of the Committee. Let me first welcome you to the State House in Boston, Massachusetts and express my appreciation to you for coming here this morning and for holding this very significant and important hearing.

It is probably a truism to recognize that if anyone was traveling on the central artery this morning, they can be expected to be late. So, we will welcome the other Members of your subcommittee when they arrive.

I am going to be very brief. I have given testimony to your staff. And when you have an opportunity they will be able to share that with you. I just say that I represent the Town of Marshfield and Scituate on the South Shore. Scituate is the state headquarters for two distinguished organizations. One, the Massachusetts Lobstermen Association and, second, the Massachusetts Inshore Draggermen's Associations.

Folks who engage in those kind of activities on our waters are absolutely supportive of renewing and reauthorizing the Fishery Conservation and Management Act. They indicate, however, that they would ask for your concern in two principal areas.

Number one, that there be greater, more effective coordination between the regional councils and the state fishery management divisions.

Secondly, that there be more cooperative and reciprocal law enforcement activities between the Federal and the state agencies.

The only other comment I would make is simply this that thirteen, fourteen years ago I think many commercial fisherman felt

that the 200 mile limit would be the panacea to allow them to have some modest opportunity to earn a decent living for the rest of their life.

We have found out, particularly during this decade, that that is not so. That the issue of coastal pollution and the issue of significant depletion of the resource rank high with the concern that you have already expressed both in those areas and also in the area of maintaining the 200 mile fishing limit. Thank you very much.

[The statement of Mr. Hynes can be found at end of hearing.]

Mr. STUDDS. Thank you. We appreciate your hospitality, your kindness. I understand you were a great deal of help in arranging with the hearing. We are very much in debt.

Mr. HYNES. Thank you.

Mr. STUDDS. Start early for home. I also want to acknowledge, I see standing in the corner a distinguished member of the state Senate who happens to represent the city of New Bedford, which is the heart and soul of the New England fishing industry from my particular perspective, Senator Biff McLean, who is in the corner over there. Senator, do you want to speak—thank you for being here.

Now, we are going to proceed in a somewhat unconventional fashion. I think the witnesses have all been advised of this and I want to make the sure the Member understand, as well.

We have three gentleman sitting over here who we have designated on the witness list as the technical assistance panel. They are Dr. Vaughn Anthony of the Northeast Fisheries Center of the National Marine Fisheries Service. Lieutenant Commander William Chappell of the United States Coast Guard, Atlantic area. And Mr. David Borden, who is the chairman of the New England Fishery Management Council.

It is our intention, gentlemen, to treat you as a resource to be available to comment, either to react to statements made by the panels of witnesses or to be there for questions Members of the Committee may have based on testimony of the several panels and their witnesses.

I am going to, with the permission of the Subcommittee, throw one general question, if I may, to you prior to calling up the first panel. And as I say to Members, if we can all absorb the response of the panel to the first question, we will then seat the six members of panel number one and we will proceed in a somewhat less unconventional fashion, but very informally.

Now, if I may, first of all, I guess, Mr. Anthony of the National Marine Fishery Service, in my opening statement I said that one of the fundamental questions we are going to discuss today is whether current fishery management efforts will be enough not just to stop, but to reverse the declining groundfish stocks of this coast.

In your judgment, based on the data available to you, what is the answer to that question? What's wrong and what do we need to do? Are these efforts enough or are they not? If not, why not?

STATEMENT OF DR. VAUGHN ANTHONY, NORTHEAST FISHERIES
CENTER, NATIONAL MARINE FISHERIES SERVICE

Dr. ANTHONY. In my judgement, the current efforts are certainly not enough to reverse the trend in the status of the stocks. If I may, Congressman Studds, I would like to take a few minutes to show you what the status of the stocks really is and what the problems are that we are really facing. I have some flip charts, if I may—

Mr. STUDDS. I think that would be very appropriate as an introduction.

Dr. ANTHONY. Thank you. It is a makeshift arrangement. I hope you can see this and I hope that you can hear me.

First, I would like to just show you the condition during the last ten years in terms of the groundfish fishery and specifically, the otter trawl fleet to give you an idea of how bad things are and where we are.

From 1976 to 1988, you can see on this chart the increase in fishing effort for three areas; for Georges Bank in terms of thousands of days fished by a standardized fishing vessel, in the Gulf of Maine, the increase in effort, and for Southern New England the increase in effort.

The effort has increased greatly over that period of time and it has doubled in many areas. As a consequence, the landings have increased tremendously from the 1976 to 1982-83 time period. Catches doubled on many species. Many species went from being underfished to overfished in about three years. Such species were American plaice, cusk, ocean pout, winter flounder, haddock, white hake, gray sole, and so forth.

In Southern New England, the landings doubled. In Georges Bank they increased by 80 percent. And then about '82, '83 until the present time you can see a very dramatic decline in landings. This is a consequence of overfishing, a decline in the abundance of the resource, high fishing mortality, and a steady decline in spite of increased fishing effort.

This (chart) puts the two in perspective—the otter trawl landings and effort. You can see that the effort has gone up. The landings are up to a certain point, but then dramatically decline in spite of the diversification among the fleets to other species such as ocean pout, butterfish, squids, cusks, and so forth.

The population abundance of these species is simply not large enough to keep the landings up. And the fishery is mainly a traditional groundfish fishery for cod, haddock, yellowtail flounder, and winter flounder. Those species simply could not stand this tremendous increase in effort.

In terms of the number of days, the effort may have doubled. But if you realize and look at the fact that there also was a great increase in the number of larger vessels, a change in the way people fish, the use of electronics, etc., etc., the fishing mortality and the fishing effort, generally, have more than doubled in the last ten years. The way the fleet is growing today, there is potential for the fishing effort, and the fishing power of the U.S.A. fleet to double again in the next few years.

The major problem that managers have is the tremendous ability for the United States fleet now to catch fish. This fleet is far more efficient than it was ten years ago. And with the abundance now at very low levels it has compounded the problem.

This chart shows you the landings per day by otter trawls for the last ten years. You can see general overall decline. This is an index of abundance over a period of time for all of the landings taken by otter trawlers, which includes squid, butterfish, and the like.

You can see that the landings per day have come up a little bit this past year. That is due to one year class of cod on Georges Bank and to the squid in the Southern New England area in the last year. Already in 1989, though, the catch of cod on Georges Bank is dropping off from that one year class because of a very high and effective fishing effort.

Here is an example for cod of the trends in fishing effort and catch per day fished. I want to just show a couple of figures on cod and one on haddock to give you an idea of the situation on a species basis.

For cod, you can see that the fishing effort has steadily increased. It has reached record high levels. The catch per day index of abundance has reached a record low level for this period of time, and cod is in the worst condition in history.

In terms of the spawning stock biomass you can see here a 70 percent decline of the spawning stock biomass of cod on Georges Bank from 1980 to 1987. The catch in 1987, for example, was but equal to the quantity of the spawning stock biomass. It is down to about 35,000 metric tons of spawning potential now.

Georges Bank haddock is the classical situation. The United States fished this stock from 1920 to 1960 at the MSY level about 47,000 to 50,000 metric tons. It was an excellent fishery. In just over two years of overfishing by the United States, U.S.S.R., and Canada, this stock crashed to very low levels.

The catch jumped to 150,000 metric tons in 1965. It went to 120,000 tonnes the next year then dramatically declined. This fishery waited ten years for some opportunity to rebuild. And this is the point I want to make. In terms of groundfish, you have got about a ten year problem that you have to deal with in terms of opportunity for rebuilding. In terms of shellfish, such as lobsters you are talking about a 20 year problem for rebuilding.

But in this ten year period, we did get some good recruitment which came in 1977, the 1975 year class. We had increased catches. This year class spawned in 1978 as three-year-olds. We got another little spurt of production from this year class (those born in 1978) in 1980 in fishermen responded to these two year classes and they were overfished and wiped out very quickly.

Now, we are waiting another ten years. By 1989 we still have not seen any improvement in recruitment coming into the haddock stock. The only chance we have to rebuild this stock is when we do see enhanced recruitment coming in again, (which we should see soon) that we protect it from being overfished. That's the only way we can rebuild.

We have been catching about 15,000 tonnes of haddock per year on the average since 1966. We used to average almost 50,000 tonnes per year. And so, you can see the loss per year for the last 22 years

that we have had to endure simply for the overfishing in two years. Now, we are at a very low level and the lower these levels go the more difficult it is to rebuild.

One other point. Some of the stocks that have been underfished have increased dramatically. Mackerel have increased by a factor of four during the last ten years. We have almost two million metric tonnes of mackerel—by off our shores. Squid have come back, considerably. Herring in the Gulf of Maine have come back by a factor of three in the last ten years. On Georges Bank the herring stock that was wiped out by the foreign nationals in 1975 is now coming back quite nicely. I feel strongly that as the herring stock on Georges Bank comes back the silver hake will come back as well.

The dogfish population has doubled or tripled; the skate populations have doubled. On Georges Bank they comprise about three quarters of the biomass there today.

The problem is that with the situation of competition from skates and dogfish and, probably from the silver hake in a few years, it may take all of the managers abilities to rebuild the traditional groundfish species of cod, haddock, and yellowtail flounder. And the lower the basic stocks go the more difficult it is to rebuild. Thank you.

[The statement of Dr. Anthony can be found at end of hearing.]

Mr. STUDDS. Thank you, sir. That is very, very helpful. Commander Chappell, do you want to respond to that same question from the perspective of the Coast Guard or do you want to go in the reverse order? The staff says that for some reason you should be the third and not the second. So, let us first go to Mr. Borden.

Your perspective as chairman of the New England Management Council on the question which Dr. Anthony just addressed.

STATEMENT OF MR. DAVID BORDEN, CHAIRMAN, NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Mr. BORDEN. First of all, let me welcome the Chairman of the Committee and the Members of the Committee back to New England.

When I was invited to testify today I was told that I would be here to answer questions and I guess we have started right off with a bang. I guess my direct response would be that the past and current efforts of the Council have not been deemed to be sufficient to rebuild the stocks.

I think that the Subcommittee should deal, in particular, with one issue. And that is, why? Why has that taken place? I think there are a whole host of reasons as to why our management measures have not worked in the past and may not in the future if we don't address some pressing problems.

In my own view, the most pressing problem is the enforcement and compliance situation in New England. Essentially, we have set up a system which penalizes honest fisherman, honest law abiding fisherman. To put that issue in context, I would just like to review a few statistics. There are approximately 5,000 miles of coastline in New England. There are a 1,000 trawlers. There are 50,000 licensed

fisherman, if you include all the tuna fisherman. There are in excess of 200 off-loading locations in New England.

In order to effectively enforce any set of regulations you need a significant number of enforcement officers. In our case, the dock-side enforcement presence is administered by the National Marine Fishery Service. To deal with that situation, we have 23 agents. A number are administrative agents that do not do any field work. The total budget is \$1.3 million.

In my own view, that level of enforcement capacity is totally inadequate in order to meet these pressing fishery management needs. Fisheries in New England are worth \$600 million in the scallop, lobster, and groundfish industries alone. That's the current ex-vessel value. And yet we are only spending \$1 million on dock-side enforcement.

I view the enforcement issue as being one of the most pressing problems in terms of the current management program and past efforts on part of the New England Council to reverse these declines. I do not dispute the fact that a number of these species have declined precipitously. But the Committee should address why this has taken place.

I think I will stop there. I would be happy to answer any other questions.

Mr. STUDDS. Thank you very much, sir. And finally, let me say to Commander Chappell, obviously we have a different question for you, sorry about that. No wonder you looked panicked.

Last December you responded to requests from the New England Management Council for information concerning coast guard fishery law enforcement efforts in the northwest Atlantic. That data indicated that between 1979 and 1987 the percentage of aircraft law enforcement hours devoted to fisheries law enforcement declined from 40 percent to 15 percent. And the percentage of cutter law enforcement operations devoted to fisheries law enforcement fell from 45 percent to just a little more than 20 percent.

In other words, during that time period, if a cutter based in New England was engaged in law enforcement operations at sea, it was four times more likely to be doing so en route to or from the Caribbean than it was to be on our coast protecting a multi billion dollar fisheries resource. Perhaps, you could tell us if in your judgement the situation is going to change and also fill us in, generally, about the problem you see in fisheries law enforcement here.

STATEMENT OF LIEUTENANT COMMANDER WILLIAM D. CHAPPELL, CHIEF OF FISHERIES OPERATION SECTION, OPERATIONS DIVISION, U.S. COAST GUARD, ATLANTIC AREA

Ltcmdr. CHAPPELL. Thank you Mr. Chairman. What you quoted, I think, is a look at the percentage on a graph that I gave you and it was strictly a percentage. In preparing that I used figures which compared overall enforcement to fisheries enforcement, which certainly those percentages prevail.

What I have seen is that our fisheries enforcement after the great hump in 1978, 1979, as we started off the FCMA, the fisheries enforcement actually tailed off and it is now coming back. We are

now in 1987, at least, at the highest level of fisheries enforcement that we had been since 1979. So we are coming back.

What we are seeing, though, is that the new resources have been going in to drug law enforcement, generally. So we are getting better at fisheries enforcement. I do expect to see more units up here doing fisheries enforcement. In fact, we have done that this year.

I also have been the recipient of a lot of hard work from the First Coast Guard District people in getting their local units trained. Small boat units have been doing fisheries enforcement. Patrol boats have been doing more fisheries enforcement to the tune of almost three times the boarding rate this year as it compared to last year in FY '88. So, we are doing more fisheries boardings. Violations have generally been staying about the same rate. We are doing more fisheries boardings and looking more into the fishing enforcement as the primary duty of more coast guards units.

On whether or not this is going to improve the situation, sir, I can not tell. I do know that we are engaged in a very difficult problem. The groundfish regulations are primarily enforced at sea with mesh regs. The regulations are rather easily circumvented. You have to have a vessel practically within sight of the fishing vessel in order to be able to prove a violation or to keep him from cheating if that is his intention.

So, at this point, we have an enormous fisheries problem here. The resources are there, but I do not think there are really enough to do the job, the job enforcement, justice in the groundfish fisheries.

Mr. STUDDS. I am going to resist the temptation to ask you some more questions. You probably heard me before, talk about how if you want to see the major cutters that are based in Boston, you better look quick, because they head out to sea and turn right and go south and disappear for a couple of months. You do not see them. Their mission is predominantly in the Caribbean, as far I can see. An important mission, but you are not bursting with resources. And when you send one away there is nobody else here.

I think the gentleman from Alaska has a question.

Mr. YOUNG. No.

Mr. STUDDS. No. OK. We will go then, if it is all right with Members, directly to the first panel. Thank you, gentlemen. Please stand by. If the six members of the—I only understand only five members, the sixth one just went fishing this morning, of the first panel will come and seat themselves right by their name. Frank Mirarchi of Scituate has gone fishing. Understandable. Weekend weather, you go when you can.

Now, what we would like to do, if it is all right with you gentlemen, and I hope to heaven that it is, is ask each of you to confine your oral presentation to no more than five minutes just on grounds of sheer mathematical necessity, in terms of the numbers of hours available to us.

I believe you all have written statements. They will appear in full in the record. We will ask each of you in the order in which you appear on this list to make your oral statement no more than

five minutes and then we will throw it open to questioning by Members of the Subcommittee.

We will begin with Mr. Richard Allen of the Atlantic Offshore Fishermen's Association. Mr. Allen.

STATEMENT OF MR. RICHARD ALLEN, ATLANTIC OFFSHORE FISHERMEN'S ASSOCIATION

Mr. ALLEN. Thank you, Mr. Chairman. My name is Richard Allen. I am a commercial fisherman. I am Vice President of the Atlantic Offshore Fishermen's Association, a member of the New England Fishery Management Council, and a Commissioner on the Atlantic States Marine Fisheries Commission.

I appreciate the opportunity to express my views on the reauthorization of the Magnuson Fishery Conservation and Management Act. I have submitted my written testimony and I will try to summarize it here. My testimony is based on my personal opinions. It may or may not reflect the positions of any of the organizations with which I am affiliated.

The Magnuson Act had two basic goals, as I see it. One was the creation of the 200 mile limit and the elimination of foreign fishing. And the other was conservation and management of our fishery stock. I think the focus now has clearly become the conservation and management system. We hardly hear anyone talk about the 200 mile limit. At least, on this coast, it is pretty much assumed that the job of the Magnuson Act in Americanizing the fisheries is pretty well along.

In my view, we have attempted to separate economics and biology in our domestic management, however. We have ignored the fact that economics is the dominant factor controlling fishing effort and fishing mortality.

Traditional conservation measures such as mesh sizes, fish sizes, and closed areas can only protect fish stocks by coincidence. Measures such as these as simply a counterbalance to fishing efforts are only successful when matched to a particular level of fishing effort, which under an open access fishery is determined by the profit opportunities in the fishery.

While the New England Fishery Management Council has indicated that it will consider effort control as an option in future management plans, I am concerned that the testimony presented on behalf of the council, both by Chairman Borden in Washington, and by Vice Chairman Warren today, offers the conclusion that troublesome increases in fishing effort seen in the recent past are unlikely to continue in the future.

My crystal ball is no better than anyone else's. But I can envision circumstances that could lead to unprofitable fishing, and therefore a contraction of fishing effort or profitable fishing, and therefore a continuing expansion in fishing effort.

If we are going to leave the success of our fishery management efforts to that kind of chance, I am not sure it is worth the time, the money, and disruption that it takes.

Anyone who assumes that fishing effort will not continue to increase must also assume that fishing would not be profitable in the future.

In the absence of effort controls, profitable fishing will attract more fishing effort. No one can realistically argue that it will not.

I have become convinced after years of opposing limited entry that without direct controls on fishing effort, it will be almost impossible for the fishery management system to provide biological protection to our fish stocks.

If we do bite the bullet, as we are often urged to do, and succeed in maintaining the biological productivity of the stocks, it is unlikely that we will have an economically rational fishery.

I am not saying that we need to kick people out of the fishery, as some of the critics of limited access would claim. What we need is to provide fishermen with a conservation incentive that will result in the rebuilding of the stocks to a level that can support the existing harvesting capacity.

Under limited access, an investment in conservation will benefit the fishermen who make the sacrifice, in contrast to the present situation where we ask the fishermen to make an investment in the conservation that is a sacrifice for them, but the benefits of that are likely to go to any newcomers who stand by and wait for the fisheries to improve.

Under limited access, an investment in the necessary enforcement and administration of fisheries management will also be worthwhile for society.

The Act appears to cover the subject of limited access appropriately. It allows it, it offers criteria, and safeguards against any unreasonable system.

Adequate funding for any fishery management approach is a problem. I think it has been clear that funding, whether it is for enforcement, or research, or anything else has been troublesome and Congressman Young's approach is one that the New England Fishery Management Council has approved, at least in concept.

I would agree with Senator Stevens, however, that the money should never go into the Federal treasury. I am concerned that any program that collects money from the fishermen, and deposits it in the Federal treasury, will never be brought out for the benefit of the fishery.

Mr. STUDDS. Why the recharacterization of Senator Stevens?

Mr. ALLEN. The transition to limited access systems from traditional open access fisheries will be difficult, but I believe is inevitable. We need the understanding and cooperation of Congress as this transition takes place. Thank you.

[The prepared statement of Mr. Allen can be found at end of hearing.]

Mr. STUDDS. Thank you. Next is Mr. Bill Gordon. It says here American Fisheries Society, but I suspect you should be introduced as a former bureaucrat, not a person.

STATEMENT OF MR. BILL GORDON, AMERICAN FISHERIES SOCIETY

Mr. GORDON. They call me a lot of things. Thank you very much, Mr. Chairman and Members of the Congress. It is a pleasure for me to come back and talk to you.

I would start by saying you cannot do things differently until you see things differently. And Vaughn Anthony's characterization is not seeing things differently, then we need to get a better set of spectacles.

I think in the 1990s we need a different conservation movement. Many ways different from the efforts put forth since 1977. Rather than concentrating on U.S. fisheries development, following withdrawal of foreign fisheries, we need to focus more on conservation. Why is it not in wise use the resources available, stock rebuilding and economic stability.

We need to learn that lesson that has been self-taught over the past decade that Americans can and will overfish. Now, we have no one else to blame. Our inventive creativeness has now exceeded our environmental conscience.

I recognize that this will be difficult in New England because in New England, in particular, the fishermen are wedded to a fresh fish market and they need a constant flow of products for local markets.

There are a number of positive steps, in my view, that must be taken. First, the National Marine Fisheries Service must reestablish its reputation by loudly and visibly reordering its priorities so the public is clearly convinced the top priority of the agency is protection and wise stewardship of the resource base and the habitat, in its care, and not the production of either products or services. It cannot stand by and permit inaction or action by the councils to further erode the nation's fishery resource base.

The ability of the limited number of professional resource management agency must be freed up to put the maximum amount of effort into that task. DoC and NOAA has loaded down the bureaucracy with a bunch of paperwork. I am told recently that two people are busy writing justifications so more than four people can go on travel to various meetings. Two people who are formerly doing more productive work. Congress—

Mr. STUDDS. Dr. Anthony is in tears.

Mr. GORDON. Congress and the agency must find ways of adequately financing the essential needs of the agency. Personally, I favor creating equality in financing the agency—revising the Saltonstall-Kennedy Act so that 100 percent of the true fishery products tariff revenues are dedicated to the agency.

These funds should be augmented by fees obtained from annual vessel license sales and from a landing tax paid by all who sell their catch. That must be applied to all species of fish and shellfish, recreationally or commercially taken and offered for sale. The license fees and landing tax should apply to any owner operating a vessel taking any species under Federal or Federally sponsored management.

All revenues so derived should be made available until expended by the agency subject only to overview by the Congress. Too often the funds are made available to National Marine Fisheries Service by Congressional actions, only to have them used elsewhere in NOAA or the Department of Commerce or their expenditure is denied by OMB.

My revisions to the Saltonstall-Kennedy Act would give equal status of the fishery product tariff revenues as compared to the

Wallop-Breaux amendments to the Dingill Johnson programs which allocates tariff receipts on fishing tackle and related gear to this program. If appropriate, some significant portion of the Saltonstall-Kennedy funds could be earmarked for market promotion or industry oriented research designed to improve efficiency in presenting the consumer a safe, quality seafood product at a reasonable price. Provisions in the authorization for levying a landing tax should provide revenue sharing with the states provided they work in partnership with the Federal Government keeping stewardship of the living marine resources.

The Magnuson Act needs amendments in a few places. Now to hit a few highpoints. It should be amended so that the owner must pay reasonable fees. The council should be afforded the opportunity that when a particular habitat loss or degradation will result in lowering the productivity from that habitat or result in reducing the wholesomeness of seafood or safety of the seafood products produced from that habitat, the opportunity to petition the Secretary to hold hearings and gather data and evidence regarding that concern. Should the evidence support the views of the Council then the Secretary must take action to remove the threat.

Amend the Act to require that whenever landings from any fishery falls below 60 percent of the long term yield as a result of recruitment failure or overfishing that the Council and or the Secretary must impose a moratorium on new or replacement vessels entering that fishery until such time as the fishery recovers to 90 percent or more of its long terms yield.

Increase the limits on civil penalty from \$25,000 to \$100,000 and make clear that forfeiture of permit should be imposed for repeat offenses.

In addition to the amendments of these acts, I think the Congress should abolish the Obligation Guarantee Program and the Capital Construction Fund. They have had their purpose and, I think, they no longer fit into the scheme of things. Currently, those invested in the latter program should not be penalized but should be allowed to use their funds for upgrading their vessels in such areas as safety, crew comfort, sanitation, handling of waste (related to MARPOL Annex V), refrigeration, or improving the quality of the fish.

In addition, they may wish to invest their money in the gear research to reduce the by catch and improve escapement of small and/or unwanted fish species. Another area where worthy of investment is crew training.

Mr. Chairman, I am also wearing the hat of the American Fisheries Society. I remind you that a number of years ago the leadership of that professional organization of scientists and fishery scientists managers concluded that the Federal Government was too diverse in the area of fisheries to be able to do its job.

The two-year study reflected in findings that there was no clear Federal fisheries management policies, no strong champion for policy development, no visionary leadership, competition for limited budgets, overlapping responsibilities, inefficient use of facilities, conflicting policies and regulations and operating procedure.

I was somewhat surprised to learn myself there are 37 different Federal agencies with fishery responsibilities. And just combining

the two major ones, the National Marine Fisheries Service and the Fish and Wildlife Service would reflect at that time a savings of \$5 million to \$9 million that could be reallocated for other work.

The Society's findings also were recognized by the President's Commission on American's Outdoors. That report released in December of '86, states that "development of a coherent national program has not been possible due to fragmented fisheries authority." That report recommended establishment of a single Federal fisheries agency.

Lastly, Mr. Chairman, you yourself said that the Congress must stop managing the resources. Give the professionals that opportunity, support them, provide them overview, and tell them to get on with it.

Mr. Chairman, the record suggests that with appropriate leadership and commitment this country can do a credible job of resource management. There have been many success stories. Natural resource systems show surprising resilience and capacity for recovery, if people halt the abuses and begin to apply good management.

Again, as I said, you cannot do things differently until you see things differently. In 1972, I suggested that limited access was worthy of a look, as seen on the part of the fishery manager of that period. I was just about run out of New England on the so called rail. Thank you, Mr. Chairman.

[The prepared statement of Mr. Gordon can be found at end of hearing.]

Mr. STUDDS. Welcome back. Thank you. Next is Mr. Harvey Mickelson speaking for the New Bedford Seafood Dealers Association.

STATEMENT OF MR. HARVEY MICKELSON, NEW BEDFORD SEAFOOD DEALERS ASSOCIATION

Mr. MICKELSON. It is indeed a pleasure to be able to appear here today. I represent—I am a practicing attorney but have spent many years—

Mr. STUDDS. We will not hold that against you.

Mr. MICKELSON [continuing]. In fishery issues. I appreciate your consideration. And have been fortunate enough to have been a member of the regional council. I even remember when there was something called ICNAF. And much has not changed since ICNAF. There seems to be the same concern for enforcement allocation, abundance of the stocks, same catch phrases, same type of jargon, same type of arguments, and cast of characters.

It was very interesting to see the charts that were put up before. I would like to make a comment on those charts and it is just a personal opinion. The landings that appear on those charts in many species represent in some cases half of what was actually landed.

Those are the landings that have been reported and have been picked up as a result of the harvesting activity that have to become under the scrutiny of those that are involved in putting together the data.

I state to you without any equivocation that substantially more product was taken from many of those stocks during the years that

were indicated. And the damage, the additional damage that was done to those stocks was as a result of the manner in which we attempted to enforce the conservation of fisheries.

It was interesting getting prepared for this. It gave me an opportunity to take a look at the Act. And I came across a couple of items that, perhaps, the basics. Section 2 of the Act declared that the commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the nation.

May I suggest that during these years, at least in the harvesting sector, there has been a tremendous decrease in the health of the processing industry in its work force, in its ability to maintain a presence within the economic system, its ability to deal effectively with its foreign competition. The American fish processing sector is in a state of deterioration. It is probably, at least in our area, it is probably operating at 40 to 50 percent of the capacity.

At the time that the Act was put into existence, it appeared that the United States was lest declaring that it had a domestic fishing industry. And that we had a basis for declaring a national fisheries policy. The years have gone but there does not seem, at this time, to be a policy. The negotiations between our friends in the north and our friends overseas all through these years never created a deep linkage between the ability of the American processing industry to distribute in exchange for the ability of foreign vessels to function within our areas by permit. That has failed.

The years have seen this tremendous introduction of capital into both sectors of the industry. I think most of us felt that the fishery plans "were going to prevent overfishing while achieving on a continual basis the optimum yield from each fishery for the United States fishing industry."

I suggest that in most species that I am aware of that not in one plan can we say that we have taken the optimum yield and conserved the fishery with all the years that we have under our belts dealing with the situation.

The species in the northeast that we are most familiar with we have carried out conservation and management by instituting plans that have as their primary conservation tools proven to be unenforceable and, in my opinion, have resulted in absolute violation of the Act and the basic standard set forth in section 301.

To this day we have management plans in groundfish, flatfish that require a fisherman to refrain from catching fish under a certain size while using equipment and nets which cannot control the size of the fish that he is catching. And that if he catches it, he is in trouble, if he throws it back.

In the various fisheries and scallop plan we have used as the primary management tools size, average size, sample, shellfish, trip limits. And with all these artificial methods of achieving national standards most of these stocks, as has been indicated by the Chairman, are at a lower level than they were 12 years ago.

The destruction of the stocks during these years have been as a result of them not being enforced in the manner which was necessary in order for the tools to work. That is factual. The plans that include poundage limitation, size limitation, net size limitation have provided the basis for the destruction of millions of pound of

product. Not only in the catching and discarding, but in the catching, bringing to shore, and selling in the black market.

In addition, as an aside, the introduction of that undersized and deceitful product in the market has impacted on the market place as far as the processes are concerned in their competition. And is also reacted in the necessity of taking those black market species into consideration when bidding for the product of the harvester. It has a multifold effect. Enforcement has been sparse and just enough to create these black markets.

If the harvesting and processing industry were allowed to operate without interference, without government interference and artificial destructive conservation and the measures now in existence without the enforcement, I have a very strong feeling that as a result of pure economic factors, as a result of the market place at work that the state of the stocks would be no worse then they are now or, perhaps, better. Maybe, we would be in a situation in which the balance of economic factors would take and create a conservation of its own. Because what we have done has been actively destructive.

In the meantime, I suggest an amendment be made to the Act which absolutely mandates that no fishery management plan be adopted, no regulation be promulgated that does not carry with it a clear basis for funding and maintaining the personnel and facilities available to enforce the plan on a uniform basis at all places to which the plan applies.

I would recommend that the general counsel's office be helpful for the industry in scrutinizing the methods and procedures being used by enforcement in their normal operations pursuant to the act to determine whether these procedures in any way are contradictory to the due process normally accorded to individuals and companies in similar circumstances.

I would recommend that the structure of the regional councils be continually monitored to make sure that representatives of those who are actually engaged in the day by day harvesting and processing activities are represented on the council and that their presence is not diluted by those who work in the wonderful world of theory, statistics, and conjecture.

Now, I realize that that sounds like a completely contradictory to what Mr. Gordon has said. But I also know that there is nothing more effective and there is nothing more filled with experience than to have people who are engaged in the fisheries are people that are very close to them continually giving their input to the councils. I have seen through the years where they have been right. And the statistics have failed.

I would recommend that each council be required at the end of each year to assess the plan in existence and to vote whether the measures in existence have, one, achieved on a continuing basis the optimal yield for each fishery. Two, have been adequately enforced in all areas in which the plan applies. Three, have resulted in products harvested from the sea during the course of the harvesting operation pursuant to the particular fishery plan then being used has been disposed of in a manner which "has contributed to the food supply, economy, and health of a nation."

And I would recommend that unless the prior questions cannot be answered in the affirmative by each counsel on each plan that the plan be terminated and new additional management plans be instituted in this area until all outstanding plans have been assessed as, herein, provided.

I know it sounds harsh. I know I sound like I am blowing smoke. But I know that we have to date, and if we continue to do it, we will destroy the rest of the fishery out there.

The only reason, the big catch phrase, that came into this Act was under utilized species. And the only reason we are seeing under utilized live species is because there is not anything else out there. And as long as we continue to administer this program the way it has been administered, we will have continued destruction. Thank you very much.

[The prepared statement of Mr. Mickelson can be found at end of hearing.]

Mr. STUDDS. Thank you, Harvey. Our next witness, Mr. Frank Mirarchi of the Massachusetts Inshore Draggermen's Association is currently inshore dragging. I think we should observe a moment of silence hoping that his harvest will be abundant, but not overly abundant.

We go to Mr. Lester Smith, the Atlantic Sportfishing Association. Mr. Smith.

STATEMENT OF MR. LESTER SMITH, ATLANTIC SPORTFISHING ASSOCIATION

Mr. SMITH. Thank you, Mr. Chairman and Members of the Committee. I am Lester Smith, the Executive Director of Atlantic Sportfishing Association. Also, a two term member of the New England Council.

I welcome the opportunity to appear before the Committee today to provide the views of the Atlantic Sportfishing Association, an organization of a saltwater anglers and recreational industry representatives.

We are becoming increasingly concerned about the declining stocks of fin fish,—cod, haddock, flounder, and large—of the New England coast.

Mr. STUDDS. Can you speak up a little bit? Move the mic a little closer.

Mr. SMITH. I will pick it up. The ASA does not believe that the downward trend are cycles in nature and feels that over harvesting, inappropriate fishing practices, inadequate management measures have been responsible.

We hold the belief that stocks will continue to decline unless a more stringent and meaningful management action is taken by the New England Fisheries Management Council. It is absolutely essential that a conservation safety factor be incorporated into every fishery management plan.

The ASA continues to be critically concerned about the strengthening of the MFCMA Act so that we can review the trend of stock depletion—a healthy fish upon which the recreational fishery depends.

The two and a half million sport fishermen in New England generate over one billion impact on the regions economy. Marine alone is 495 million. Sportfishing creates over 35,000 jobs in New England and contribute over \$11 million in the Wallop-Breux tax revenue.

Pollution of our streams, rivers, and estuaries have been reduced in the past decade by aggressive Federal and state programs. But fisheries continue to be effected by discharge of toxic materials and ocean dumping of hazardous waste. The National Marine Fisheries Service new habitat policy recommends the Council incorporate habitat and FMPs. It requires the agency to provide Council such data on habitat as needed in FMPs.

But the new habitat policy does not require, and I will repeat, does not require the Council to do anything about habitat. Amendments codifying the habitat policy will assure that congressional intent in clear.

The Environmental Protection Agency monitoring activity at the 106 mile dump site are clearly not sufficient. EPA has not strived to encourage sharing on scientific data gathered at the only active dump site in the continental U.S. waters.

After more than two years, \$2 million, EPA still has not began to look at the accumulated effects of the dumping. More Federal safeguards are needed to protect the marine environment, living marine resources, enforcement, habitat monitoring, and long term allocations of budgetary resources where scientific research at the 106 mile dump site be developed and implemented.

Mr. Chairman, I would recommend that National Marine Fishery be designated to lead the agency and that it be taken away from the EPA. Thank you very much.

Mr. STUDDS. Thank you, Mr. Smith. And our final witness on this panel, Mr. Jim Warren, the New England Management Council Groundfish Committee Chair. Boy, do you have some explaining to do according to these people. Good luck.

STATEMENT OF MR. JIM WARREN, NEW ENGLAND MANAGEMENT COUNCIL GROUND FISH COMMITTEE

Mr. WARREN. Thank you, Chairman Studds. I appreciate the opportunity to be here today. I am particularly pleased to see Congressman Brennan here——

Mr. STUDDS. You sound a bit like a constituent of his.

Mr. WARREN. He is the guy responsible for me being here as he has nominated me for this Council seat when he was Governor of the state.

Mr. STUDDS. I see.

Mr. WARREN. My name is Jim Warren and I am Vice Chairman of the New England Council as well as Chairman of the Council's Multispecies Committee, also known as the Groundfish Committee.

I will confine my remarks to the New England Council's Multispecies plan and how it relates to suggestions for strengthening the Magnuson Act as other Council members will further discuss issues pertinent to the reauthorization of the Act.

Many of the stocks important to the New England's mixed trawl fishery are managed under this plan. And as you probably know,

many of these are near historic low levels. The Multispecies plan is a long term plan which has been in place for only two and a half years.

It was developed from the input from the fishing industry to allow fishermen the flexibility to switch among areas and species depending on changes and fish availability, prices, and weather.

Under this plan, the Council made major changes in fish sizes, mesh sizes, the way mesh regulations are enforced, seasons and areas for small mesh fisheries. These types of changes take time to work. The Council has also continually made improvements in the plan.

At present, the Council is proposing a flexible area action system, a measure unique to U.S. fisheries management. The Council will also continue to consider other ways to reduce unnecessary small mesh mortality on cod, haddock, and the flounders.

Additionally, in response to concerns from fishing industry and others, the Council will consider more direct controls on fishing activity in the Multispecies fishery plan in the near future. I will have more to say on the subject of effort after controls. But first I must address more immediate problem, enforcement and the overall level of administrative and legal support for Council plans.

Any management systems needs to be adequately administered and enforced. It is interesting to note that the Council's first groundfish management plan implemented in 1977 was based on catch quotas. One major reason way the Council abandoned this system was that NMFS lacked the resources to properly administer and enforce it.

Because of lack of enforcement, large quantities of fish were illegally landed, under-reporting severely damaged the very source of information, the commercial fisheries data base on which the Council relied for management information. Fishermen who obeyed quota regulations were put at a great competitive disadvantage over those who did not.

More recently, inadequate enforcement resources have had a similar effect on the Multispecies Plan. Too many violators of fishing regulations can afford to view the infrequent and minimal penalties they might receive as a cost of doing business. In addition, the lengthy period before penalties are imposed and extensive plea bargaining allow them to continue fishing and gives other fishermen the perception that the violators avoid penalties. This further reduces the incentive to comply with regulations. Again, fishermen who obey the regulations are put at a severely competitive disadvantage over those who do not.

Council has also struggled to get adequate levels of administrative support from NMFS for programs such as the Exempted Fisheries Program, sea sampling, and conservation engineering, which are critical to the success of the current management system.

Instead, the Council has too often been second guessed for its lack of direct effort control. These types of measures are always controversial and cannot be implemented without high levels of industry and NMFS administrative support which to date have been lacking.

The Council is currently considering effort and entry control measures for the sea scallop fishery. However, without additional

administrative and enforcement support, these measures will, undoubtedly, fail.

Without industry support to decrease fishing effort, the Council had no control over the fleet's rapid growth from 1978 to '85. In fact, fishermen used Federal subsidy programs, such as Capital Construction Fund and the Fishing Vessel Obligation Guarantee Program to finance at least part of this expansion. Fortunately, for several reasons, this type of growth in the fishing effort is unlikely to occur again in the near future.

On a more positive note, fishermen in the northeast have the flexibility to harvest a wide variety of species under the current system and, to a large extent, have survived declines in major stocks and the loss of some of our most productive fishing grounds to Canada.

Fishermen are now reporting greater numbers of juvenile yellow-tail flounder, cod, whiting, and dabs, and we believe that the latest NMFS survey data will confirm that recruitment for some important stocks, including Georges Bank haddock, shows some improvement.

In closing, I would like to note that the Council looks forward to cooperating with the fishing industry and NMFS in constructively addressing the problems of the New England fisheries and that we need your support to do so.

I also would like to submit written testimony at a later time to substantiate my comments and will try to answer any questions that you might have. Thank you very much for the opportunity.

[The prepared statement of Mr. Warren can be found at end of hearing.]

Mr. STUDDS. Thank you very much, Mr. Warren. I checked with Congressman Young as to whether or not interpretive services were needed. He says he is astonished at how well he understands the proceedings, so far. We do not have a language barrier. We often worry about these things when we go around the country.

Fortunately, our former colleague John Breaux from Louisiana is not here. He could never understand a word anybody said. We appreciate that.

Let me try to start off with a very general question, if I may. We are here, as you all know, because the basic Fishery Conservation Management Act expires and needs to be authorized this year. It happens to coincide, as everybody very well knows, with a crisis in the New England fisheries, as well.

I suppose it is fortuitous that the normal legislative process compels us to have this focus. I suspect the crisis in our own waters would compel us in any event.

We have, obviously, and it has been documented here, it has been documented in other forums in recent months, a very, very major problem with respect to the resources in the northwest Atlantic.

Now, the fundamental questions before the Subcommittee, as we looked at the law, as this year goes on, is wherein lies that problem? In order to deal with it, do we need to change the law? Is it the law itself that in some way the statute, that it is at fault and it must be amended to deal with this problem? Or does the fault lie in the management plan themselves that have been inadequate

and have resulted or contributed to in some way, or failed to arrest the decline of the stocks, or is the problem neither in the plans, but in the inadequate enforcement of the plans? Or is it some combination of one or more of all three of those things?

When you look at the problem in its totality, in its generality, where is the problem? Do we need in this Congress to be looking at changing the statute to deal with the declining resources at Georges Bank? Do we need to take a hard look at the substance of the management plans themselves? Are they the culprit here? Or do we need to look at the inability of this country at the moment to enforce the plans that do exist? Wherein is the principal problem? Who wants to tackle that to start with? Mr. Gordon.

Mr. GORDON. I do not believe that the basic Act is seriously flawed, Mr. Chairman. Candidly, and looking back over at my many years of experience, I see the unwillingness, or incapability of mankind to get tough with its fellow citizens.

I think this has happened frequently in resource management until we have a crisis situation and then we do get tough. Tough means we often are pushed by the Congress. That is why I am suggesting the two amendments that I think would put real teeth in it. If a stock declines from overfishing or poor recruitment, that if the Council did not act, sooner or later there would be an automatic moratorium imposed in that fishery. Putting the brakes on, further expansion, if any vessel left the fishery, they could not get back into it.

On the other side of it, I do not think the general public views natural resource management as a serious undertaking. We do not treat our environment very serious, either. We have to look at those two things in a different way than we have over the past.

I think there is an educational component that has been totally lacking in all of this. Looking back at 1977, as the Council started to work in New England, I, looking at the scientific evidence, having been involved in ICNAF over the years, pleaded with the Council to invoke prudent regulation then until we could see a re-establishment of some biological balance in our resources and in the age composition as well as in the species composition.

What we fail to recognize is that fisherman of that area were not around as their fathers were or their grandfathers where when the Russians did a number on us. So, we forgot the lessons that the foreigner was telling us and we had this euphoria of plenty.

Enforcement, yes. It needs to be beefed up. But NOAA, back in those glorious days when Congress was willing to give it and the Administration was willing to see more money given to it, raped the National Marine Fisheries Service to the tune of several million dollars. As I recall, they took 39 positions for enforcement away from the NMFS at that time and used them for other purposes unrelated to fisheries.

NOAA today has enforcement management located in Washington. That does not make any sense. The action is out here. No one can sit in Washington and understand the diversity and complexity of what is going on out in the field and to use your resources and martial them appropriately. So that needs to be looked at.

As I said, the agency is become overwhelmed righting justification for this or that. People are devoted to paperwork. And this in-

cludes the Council and some of the requirements of the acts that effect them rather than an aggressive fisheries management.

So there is a plethora of things to be changed. But I do not see serious flaws in the thinking that went into the Magnuson Act. We just have to put our minds to the task to see it differently, and make it work. It will take resources and that is where I suggest dedicating the tariff, a landing tax, and a license fee to the agency and keep it out of the clutches of the Administration.

Mr. STUDDS. What you see as most needed in the amendment is human nature?

Mr. GORDON. Yes.

Mr. STUDDS. And failing our ability to bring that off, if I understand your response, you think the fault lies primarily in the plans themselves. Is that fair?

Mr. GORDON. Well, I have often heard the council say, we put up the stop signs and you, the Federal Government, have got to police those stop signs. Well, that is irrational too. We have to create more enforceable plans. And so there is faults in the plans but that is not a basic fault of the act itself.

Mr. STUDDS. I understand that. Does anyone else want to respond to that question? Mr. Mickelson?

Mr. MICKELSON. I do not think that we have found out whether or not there is any fault in the plans because the plans have not operated under an enforcement regime. I think that it is unfair to look at the plans now in existence and try to get a conclusion as to whether or not they can or cannot work, because they have not been enforced.

From my observation, there is no one that wants more for each and every fisherman to have to subject themselves on a consistent basis to the plan than the fishermen themselves. There is nothing that they would like more than to have uniform enforcement of these plans.

So, I have a problem. I would like to say the Act failed. Because if you look at the plans, that I have seen, the plans have failed. But I do not think that is a fair statement. The plans have not been operated on the type of basis that they were intended to be.

Thank you.

Mr. STUDDS. OK. Mr. Smith, I am going to let you guys reflect.

Mr. SMITH. I am going to change the pace just a little bit, Mr. Chairman. For the last eight months I was chairman of the Coalition of Sea Ocean Dumping on the east coast. And a group of recreational, commercial fisherman came together. We hit head on. There is no money. There is no money to do research.

So, I believe that some of the factors for the decline of stock is directly related to the dumping issue at the 106. You got a tidal flow that is going right on the continental shelf in George's Banks. This is why I recommended that the lead agency, not EPA, be given on research, be given to National Marine Fisheries with long term, and I say long term, funding for the scientific research.

I think that it is very important that we put our finger on what is going on out there. What they are dumping and what effect it is having on the marine life. And that is where I am coming from. I mean, we have gone through it on the dolphins, a half of them died on the east coast and the scientific community came in with one

statement of virus, another red tide, and now they have identified PCB's. So that is where I am coming from. And I think we should come on it strong.

Mr. STUDDS. Thank you. Mr. Warren, what has gone wrong? Where is it? The law? The plan? The enforcement? What?

Mr. WARREN. Well, I think, enforcement is the number one. And, I think, there are four points I would like to make on enforcement.

One, the maximum penalty for a violation of the Act should be increased to at least \$50,000. In today's day and age the penalties are not severe enough. We do not have enough follow up in the legal system. As I understand there is one and a half administrative law judges for the United States to act on fisheries violations so the tendency is to pull back and close the file or to do away with it so that the penalty ends up being pretty small.

Twenty three enforcement agents in the fisheries service. Ridiculous. We need to also, and I am not sure whether this is a problem with the Act or administratively, but the regional director needs the power to invoke permit sanction for serious violation, repeat violators, so that the action can be swift and sure.

Now, the other point I would like to make is that in regard to the management system. There are a number of management systems through the world and I do not think anyone has come up with the right answer. The Canadians to our north have a limited entry quota system. And I note from a recent article in the *Globe and Mail*, scientists, I will just read one sentence; "scientists at the Department of Fishery, recently announced that they had seriously overestimated the abundance of Canada's largest fish stock, the northern cod, and the quota would have to be cut by more than half." So, they have not got all the answers.

I also noticed in a recent article of *Fishing International* that in Europe they are having a huge discards, which is some of the same problem that we have had. So, no one has really got the pat answer on fisheries management. But we are trying to improve on mistakes of others and, hopefully, we will come up with a system that will protect the stocks. We are refining it all the time. Nobody says it is perfect. Thank you.

Mr. STUDDS. Does anybody over here want to respond or reflect on what you have just heard?

Mr. BORDEN. I was just going to comment on many of the points that Jim Warren had made. First, I would just like to touch on one item that he did not address and that is the NOAA general counsel's office, at least in our particular region.

It is my information that that office, the attorneys in that office end up having anywhere from two to three hundred counts of violations that they have to track through the system. Which is just an ungodly work load. As Vice Chairman Warren has already commented, the tendency then is to try to settle out of court so that those individuals do not end up using the valuable time of the attorneys. And Jim made the other points that I was going to make relative to the administrative logic.

Mr. STUDDS. Dr. Anthony?

Dr. ANTHONY. From the point of view of the status of the stocks and the management efforts to control the fishing mortality, I would like to say that even if we had perfect enforcement, I do not

think that we would be able to stop the excess effort that is on our groundfish stocks today.

The plan itself calls for indirect controls on fishing mortality. These indirect controls merely shift the mortality around from young fish to old fish—from one place to another. They do not control the overall amount of fishing mortality. The two major methods of direct control of mortality are catch quotas or effort quotas. And we have heard two people talk about effort control already today.

Until we directly control the fishing practices, either through a catch system, or through a direct effort control system, the indirect measures of minimum size, of mesh size, and others will not control the total mortality on the stock, even if they were perfectly enforceable, because of the tremendous excess of fishing effort.

We do have a lot of stocks that are underfished. As we start to fish those underutilized species, develop markets for them and move the fishing effort onto them, perhaps, we can control the fishing effort. But the big problem remains of a very, high amount of excess fishing effort which produces a fishing mortality which is three times too large.

So, from a status of stocks point of view, there must be drastic hard direct measures put in place now to control fishing mortality and to cut back on the amount of effort that is on those stocks and the amount of catch that is landed.

There are a couple of other points that I would like to make. One of the problems that we see from the science side is a lack of communication between the scientists and the managers. Many of our problems might have been avoided if greater discussion had taken place between scientists and managers on a regular basis. We have heard Harvey talk today about fishermen getting more involved and about catch data not being accurate. There are a lot of problems with catch statistics. They are not as bad as Harvey says, however, there are lots of problems. The question is: Are these data good enough to do what is intended? In most cases they are. In some cases they are not. The communication opportunities are not there on a regular basis so that managers and scientists can talk back and forth on these very issues that are causing some problems.

As far as the discard problem goes—the situation in Europe and the United States is quite different on discards. Discard problems are ameliorated in the eastern Atlantic partially by a match up of the minimum sizes with the mesh sizes. In Europe they do it quite differently than they do here and they have a lower discard rate. We could adjust the minimum size in conjunction with the mesh size, and alter the discard rates if that were a strong objective.

Basically, there are a lot of things, I think, that can be done. And the point that the scientists want to make is that the conditions are very, very serious. Fishing mortality is about three times as high or it should be for sustained high catches. And I think what I have heard so far is people just skirting around the real issues.

Mr. STUDDS. OK. I just want to turn over to my colleagues. But let me just—is there some reason that scientists can not talk to fisherman, other than the language difficulty? Does the budget cut out your phones, or what?

Dr. ANTHONY. It is not the fishermen-scientist situation. The opportunity is not there for scientists and managers to talk on a regular basis.

I simply think that some kind of a dialogue system should be put in place whereby the council members themselves and scientists have to meet on a regular basis and discuss what is going on in the fishery. We do not have that.

Mr. STUDDS. Let me turn to the gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman. First, I appreciate the questions you asked the panel. I think it gives us some light to the problems you have in New England states compared to some of the problems we have in the northwest.

Mr. Allen, I take it that you and Mr. Gordon are advocating, basically, limited entry. Is that correct?

Mr. ALLEN. The term limited entry means a lot of things to a lot of different people. I guess I would accept the term limited entry as people generally think of it. Some sort of limited access participation in the fishery.

Mr. YOUNG. I happen to not agree with the term limited entry. But I happen to agree about that if, in fact, the fishery does come back with all the scientific research and you were actually taking an active role in this as a fisherman then some banker is going to come along or some lawyer and he is going to buy a fishing boat and put it into the effort to catch those fish you tried to save. That is a common practice.

But along those lines, would a quota system work, period, on the species instead of a limited entry, where once the quota is reached, no more catching takes place?

Mr. ALLEN. As far as the biological control, I think it is pretty clear that that could work if you can politically and socially put something like that into effect. The halibut situation on the west coast seems to be the primary example of that type of management. Evidently, the stocks are protected. But you have a fishery that takes place in 48 hour—

Mr. YOUNG. Forty eight hour.

Mr. ALLEN [continuing]. For a couple of 48 hour periods during the year. And there is a lot of question about whether that is really a rational fishery management system.

Mr. YOUNG. But your fishery here is different because you are really in a fresh fish market. You would have to have an ongoing type of effort, I think. The reason I asked that I have a real problem with limited entry and the value created by an act of government of the value of the ticket. And just for your information, I doubt if I would ever support something where you would have to, by the action of Congress or the council create a limited entry, where the fishermen that have been fishing can sell the ticket after it has been created for a vast amount of money, which happens in my state. And I have never supported that. Politically, it is not wise for me to say that. But I think it is wrong. I think you should stay in the fishing industry because we got more lawyers fishing now than we do fishermen.

Mr. STUDDS. That is the problem.

Mr. YOUNG. That is the problem. So, I just want you to know that. We do have a state limited entry program.

Equipment. Dr. Anthony talked about equipment. It sounds like we invented a better mouse trap. Would that work? I mean, we can catch fish now, sonar and everything else.

If we limited that kind of equipment, would that protect the species?

Mr. ALLEN. In my own view, a lot of these things need attention and they can solve pieces of the problem. But basically, we are in a situation where we are reaching the limits of what was viewed as an unlimited resource and the open access situation we have. We have a long cultural stake in this that we feel very strongly about. Any of these measures that we try to put in place, as Dr. Anthony said, are indirect controls. The profit motive will eventually increase the effort and overcome those controls, if we leave it open ended.

Mr. YOUNG. I am not going to let Mr. Smith out of this. We do have a limited entry and cannot only apply it to commercial fishery. We also have to apply it to the recreational fishery.

Mr. SMITH. I just comment that the recreational industry supported increasing fish sizes and also bag limits. In fact, I was just down to the Gulf of Mexico council meeting and for two days the commercial debated the issue. I think they resolved it among themselves.

Mr. YOUNG. Mr. Chairman, if I may, just as—this goes for everybody at the table. What would happen if we gave the councils, I think you have authority already to issue a limited entry type under present law. It takes a lot of steps to go through but you can do it.

We have the council the opportunity to implement some type of effort, control. Gave the council the ability to raise money from the industry to enforce and to research the species, and gave the council the authority and the right to negotiate. I happen to agree with the gentlemen that said we have been negotiating the fish away for years to Canada, and to Russia, Taiwan, Japan, Korea, and I can go on and on and on and on.

But the Council, because I really think that the councils, the key to this act, is the council was to have the, not NMFS, but the Council control of the species. If you gave me that authority, do you think it could solve most of the problems or would you?

Mr. BORDEN. Yes. I think it would resolve a number of the pressing issues that confront the system now. If we had some additional funds and we could allocate, in some cases, a portion of those funds to enforcement, clearly, that would have a positive impact on the enforcement and compliance situation.

In addition to that, for instance, Woods Hole could use additional funding in order to gather the type of data at sea on discards that they have not had traditionally. If we had funding to do that, additional funding to do that, it would certainly benefit the system. If we also had additional funding to increase a number of plan administrators who support the Council process in the regional office, that would have a positive impact. So, I think the answer is yes to your question.

Mr. YOUNG. If I may, we are not going to get any money from this Administration and the next Administration and the other Administration. I am very honest with you. Fish in Congress is some-

thing that is at the bottom of the very barrel, not our barrel, but the barrel that everybody thinks that they are interested in. And I have been trying to encourage the industry, the processors, the catchers, etc., and I guarantee you that any money you raise will go back to your program, if not going to the general treasury like the Breaux-Wallop—it is going to go into your area. And I just wanted to encourage that. And if we can give you some more authority, it seems to me you can solve a lot of these problems. Mr. Gordon.

Mr. GORDON. I do not totally disagree with you. I think that one of the problems is that the fishermen, if you create the council authority, give that authority to them, essentially you have eight fiefdoms, so to speak, around the country, and you give them more money and they might well subcontract back to the National Marine Fisheries Service to do some of the research and things of that nature.

But pity the poor fishermen who traverses multiple council lines in order to go fishing. He would potentially be subjected to an array of taxes, different regulations, and that sort of thing unless there is some overriding aspect to it.

Mr. YOUNG. We are not going to do it by a single act. It would be up to the individual councils, if he wishes to do so.

Mr. GORDON. I understand that.

Mr. YOUNG. I mean, again, I do not know how else you would do that unless you want to eliminate the councils and have like the northwest council like we have, I am really getting myself in trouble now, having a, you know, a north Atlantic council, essentially, having instead of eight fiefdoms two fiefdoms or one—

Mr. GORDON. What is seen is a big difference now. In looking at all eight councils, I think the North Pacific council can be held up as an example that has a very good dialogue among the scientists, and excellent dialogue among the fishermen. Their meetings are well attended, and people understand pretty much what is going on.

Not true elsewhere entirely. There is a very, very poor use of science elsewhere, very poor use of the advisory committees, whether they are science and statistical or the fishermen's advisory committees. There is just not an effective input into the council system. So, back to your point. If you have eight councils operating somewhat differently, then I think you create some more confusion, unless there is an overview type of thing that keeps them in a relatively consistent mode.

I personally favor that you take a look at the Federal Government. If we got 37 Federal agencies out there monkeying around, somebody is stepping on somebody's toes and someone is wasting money. We really need to look at some degree of consolidation. What that is I do not have the answer. But I think it deserves a strong look.

Mr. STUDDS. The gentleman from Maine.

Mr. BRENNAN. Thank you, Mr. Chairman. Mr. Mickelson, in your prepared remarks you say if the harvesting and processing industry were allowed to operate without government interference and the artificial and destructive conservation and management measures now in existence, the state of the stocks and the state of the

industry as a result of pure economic factors would be adjusting to product availability and economic conditions.

I believe that both would be in better condition. Are you saying that if they had no rules, would be better off in regard to the stocks?

Mr. MICKELSON. Yes. I am asking—I am sorry.

Mr. BRENNAN. These are counterproductive, these rules?

Mr. MICKELSON. I wonder, really, I really wonder whether the state of the stocks would be any worse. And I really think that the type of limited entry that is being discussed here, perhaps, would not have been in existence as a result of pure economic factors.

Mr. BRENNAN. But you are saying that the rules that are in existence, had they not been in existence we would probably be better off?

Mr. MICKELSON. I would say yes. I do not have a, if I may, if we look at the background and see that the state of the stocks are worse than they were when this all started, that is a very significant frame of reference.

If the vessels were built because of the ability to go out and harvest larger and larger amounts of product, a lot of those vessels are existing not on necessarily legal product, but on illegal product too. A lot of the product that has come in has found its way into the marketplace.

On the economic side of it, if certain fish were brought in certain sizes, it would become non productive for that product to be put in the open marketplace. And it would be less fishing effort on it. Pricing would come into effect.

Mr. BRENNAN. Well, that gets to another point. I would really like to have Dr. Anthony elaborate a little bit.

He says that your charts only show one half of the landings. Now, if the Congress is going to make an intelligent decision on anything, they have to get some of the facts or what are the dimensions of the problems. It is really baffling to me when you say that his charts only show one half the landings. You say your statistics are not all that great anyway?

Mr. MICKELSON. If I may, that is not what I said, sir. What I said was that in certain species during certain periods of time they represent, in some cases, 50 percent of what was actually landed. In the years of the yellowtail flounder when there were 7500 pound trip limits, they probably represent less than 50 percent of what was landed. In certain years in the cod—they represent 50 percent of what was landed. There was product being landed and disposed of that was disgustingly small. They were referred to as hoer d'oeuvres. And that is not an overstatement. Not in every species. Not in every year.

Mr. BRENNAN. Some species some years—

Mr. MICKELSON. That is correct.

Mr. BRENNAN. They show about half the landings.

Mr. MICKELSON. Yes, sir.

Mr. BRENNAN. I am sorry. I misheard you. Mr. Warren, could you give—I'm sorry. Go ahead.

Dr. ANTHONY. May I respond just briefly. There are a lot of problems with catch statistics. But we know that these problems exist and we make estimates of them. What Harvey says is correct.

There is a lot of selling around the board, so called, at night, night raiders, and all of this.

But we have people in the ports, that have been there for twenty years or so that know pretty much what is going on. We make estimates of a good part of this. And so, while our statistics are not perfect, we have a pretty good idea of what is happening. And as to those estimates of catches, the question is are they good enough to depict what is going on with the status of the stocks. The answer is yes. We would like to improve our statistics. But they are generally good enough for what we need to do today.

Mr. BRENNAN. Have you been using basically the same formula over the last ten, thirteen years or so?

Dr. ANTHONY. Basically, we have people in about 15 locations—30 people in about 15 ports in New England, New York, and the mid-Atlantic, and so forth. They are using pretty much the same system, but we have modified it recently. We are collecting far more data now than we were before. Such as sea sampling data, and more biological data in the ports. We are doing a much better job than in the past. And we are reviewing the situation this year, for example.

We can improve it. There are lots of ways of doing it. We cannot collect everything we need. We just do not have enough people. But we are collecting more economic data than we did three or four years ago, for example. This is a new situation. We have to have more information along those lines.

I feel that we are doing an excellent job in the ports in collecting fishing statistics. I think that the port agents are doing a very good job in spite of the problems that do exist. And there are a lot of problems in the way people land fish.

Mr. BRENNAN. I just like to ask one other question with regard to this limited entry or limited access, just to anyone. How would you decide who gets the access, who gets the entry?

Mr. GORDON. I will take a stab at it. First of all, I do not think you throw anybody out.

Mr. BRENNAN. So, you grandfather them in?

Mr. GORDON. You grandfather them in. And then there is a variety of regulations that you can impose after that. It is like shoeing a horse. You try until you find something that fits. But an auction system is one way of doing it. Lotteries are another way of doing it. Providing individual transferrable quotas so if somebody wants out, he can sell his share of that to another person and allow them to take it on—let the free market decide.

Congressman Young's point was well taken. You had wealthy people suddenly spring up in Alaska that had never seen the sea who obtained a permit and lease it out.

Mr. BRENNAN. Worse than that they were lawyers, right?

Mr. GORDON. I do not know what they are. But, you know, they are people that have made a handsome profit. I mean, that is wrong for those fishermen that do not have access to a permit.

The other side of it is in New Jersey where I am now working there is over 100 marine police dealing with natural resource issues in the state of New Jersey alone. That is more than the National Marine Fisheries Service has for the entire country. And New

Jersey cannot stop the law violators. They are still taking shellfish from polluted waters and things of that nature.

So, enforcement is not the total answer. We cannot afford the level of enforcement that some people perceive would be the answer to the problem. I go back to the point I think people have to change their way of thinking about our natural resources. That is going to take time. And it is going to take some enlightened people working on the waterfront to do that.

In my way of thinking, if I owned ten percent of the resource and if we look at Dr. Anthony's example of haddock, and the level of harvest is now at 10,000 tons, and I got ten percent of it, and I know that with good management I could be up to 50,000 tons, I am going to have one hell of a strong conservation ethic and I am going to demand something from my government so I can have ten percent of 50,000.

Things of that nature that are inventive are somewhat different than they way we have been doing for many years. Everybody does not go and cut down trees anymore. We changed that a long time ago. We have changed a lot of things in other areas. But in the marine area there is no body of law that has been successfully enforced. There is no body of law in many respects.

Mr. ALLEN. If I could just respond to the question of how do you allocate the resources. I do not think that anyone has a pat plan and can say, "OK. If you want to do it that way, here is how you do it." The question to me is, if over the next ten years we put the same amount of effort and interest and work into developing a suitable program, will we be better off than if we ignored that as an option and continued to look at the traditional ways that we have.

Mr. BRENNAN. Mr. Warren.

Mr. WARREN. Yes. A couple of things that the Council is doing. One, we are having a presentation every month or so on the different types of effort control schemes that are around the world. We had one on the New Zealand system. We are scheduled to have one this month on the Canadian system. And we had one on part of the Canadian system a couple of months ago. And I think these will be very helpful to the Council in making up their minds in what is the proper way to go.

What we do not want to do is make the same mistake someone else has made. And I am very familiar with the Canadian system having lived on the border all of my life. They have a quota system. They had problems with getting accurate catch data. So, the Canadian government promised the herring fishermen if you will give us accurate data we will double your quota. Because they figured that is what they were catching anyway and not reporting it. So the fishermen said sure. And so they doubled their quota and I do not think that their catch data was any better than it was before they doubled it. So, it is not as simple as it all sounds.

And the other point I would like to make that I do not think you want to get into the trap where a piece of paper becomes worth a tremendous amount of money. I know a herring fishermen who's boat was burned. He sold his piece of paper to another herring fishermen for somewhere up in the six figures. Now, I think that is a kind of a situation where we do not want to get into where we

create wealth from a piece of paper. I think there are ways we can look at limited entry or effort controls without getting into those kinds of problems.

Mr. BRENNAN. Thank you very much. Thank you, Mr. Chairman.

Mr. STUDDS. Thank you. The gentleman from New Jersey.

Mr. SAXTON. Thank you, Mr. Chairman. First, I would like to suggest with regard to Bill Gordon's testimony when Bill talked about licensing fees and landings tax. With most Members of this Subcommittee and with most Members of the Merchant Marine Full Committee he could be very close to a very sensitive subject. As you know, with regard to license fees and landings taxes, what specifically are you making reference? And let me just say this that the feasibility of doing something like that is always very difficult, particularly, if you are talking about a license fee for sports fishermen. The practicality of getting something like that done is very small, as I am sure you recognize.

Mr. GORDON. I do not see a license fee for sport fishermen. Motor boat laws have been on the books for a number of years and people annually or every two years renew their motor boat license. So, one could attach a fishing fee to the boat, not the individual.

Commercial fishermen, if they are dealing with Coast Guard registration, do not pay a fee to the Coast Guard. They may pay a state fee, in most states, to collect a commercial license of some sort. That could be applied and run through that system by cost sharing by the state.

As to a landing tax. Alaska has a landing tax now. The state of Washington has a landing tax. Maryland has a landing tax for oysters. New Jersey has one for clams.

So, the principle of a landing tax is not unheard of. And properly applied and run could be done quite well. I think, for example, the state of Washington, Washington has like a credit card system. You cancel your license on a weight out form and all the data is entered into it and appropriate tax is collected along the lines of that sort of thing. That is what I see in terms of a landing fee.

If the National Marine Fisheries Service is going to do an adequate job, it is going to take somewhere in the neighborhood of \$230-\$240 million. If we took the Saltonstall-Kennedy funds it amounts to about \$160 million then you would not have to collect a great amount more to make that agency reasonably whole. And that is where I see it coming from.

You were successful in getting Wallop-Breaux through. The White House obviously saw the wisdom of not putting a cap on the Wallop-Breaux funds at \$100 million. And so OMB has backed away from that.

So, that is a user tax. The sportsmen are paying it whether they know it or not. I think the import duty collects a good portion of that. If we are going to be dependent on imports, that seems a reasonable way to fund part of the agency's requirements. The user eventually pays. That is what I envision in that sense.

Mr. SAXTON. So, you are not talking about what we generally refer to as a saltwater fishing license?

Mr. GORDON. Absolutely not. I think that should be reserved for the states. If they wanted to tax the individual like they do the freshwater sportsmen, that is fine. That is their prerogative.

Mr. SAXTON. Thank you. Mr. Smith, I was very interested to learn during your testimony that you were the chairman of the Sea Ocean Dumping on the East Coast Coalition. Thank you for your efforts in lobbying the Chairman of this Subcommittee and Mr. Hughes from New Jersey.

Ms. Schneider from Rhode Island and I were very active in Washington, as you know, in pursuit of legislation that eventually—yes, he voted with us.

Mr. YOUNG. I am talking about Alaska.

Mr. SAXTON. Anyway, Mr. Young was very cooperative.

Mr. SMITH. I would like to comment in reference to that. I would like to thank Congress publicly. The vote in the Congress and the House was 400 to 0. In the Senate, overwhelming and the President signed it.

I do not think we are through with the dumping issue.

Mr. SAXTON. I do not, either. And that is what I wanted to ask you about. We were not always unanimous in Congress with regard to the subject.

Mr. SMITH. Right.

Mr. SAXTON. And I suspect that if the evidence from the northern part of New Jersey and, perhaps, what is going to happen in New York with regard to court activity precedes that your point with regard to research as to the degradation of the ocean waters as a result of ocean dumping of sludge at the 106 mile site is very important.

Now, I would just like to point out to you and then get your reaction. I believe it was the NOAA authorization bill sometime in the last three weeks we amended to earmark money for research at the 106 mile site. I think that there is a, I am sure, there is a very definite need, not only in the House, but in the Senate as well, for someone to help us make the case that that money should be earmarked for that purpose.

The reason for that, obviously, is the last time that there was a court case with regard to ocean dumping the courts said that you cannot prove that sludge offshore is harmful, then we are not going to stop anybody from dumping it offshore. And to the extent that you can be helpful to us and we can be helpful to you in making that case I think it would be very, very good.

Now, I just would like to get your response to that.

Mr. SMITH. Well, I would like to comment in reference to additional research money. I think the lead agency has got to be changed. I think the responsibility, what the EPA has done out there for the last few years has been a disaster. They have already spent \$2 million, as I indicated in my testimony.

I also indicated the report of Ernest Bradley, who is the Inspector General for Auditing in the EPA, is a very, very critical report of his own agency stating that they have done very little. I would hope, and this could be incorporated in the reauthorization bill, that the lead for marine fishery research should remain with National Marine Fisheries. But you are going to—you must give them long term commitment of funding.

And this has been the problem. There was a problem all last year. We went to NMFS and say, look, keep somebody out there to find out what is going on. And their answer is we do not have any

money. It is a terrible condition. If we are killing the marine environment, we better find out what the hell we are doing there.

Mr. SAXTON. Thank you. Mr. Mickelson and Mr. Warren, you both spoke to the same subject and I think on slightly different sides of it.

Mr. Mickelson, my understanding from your testimony was that you indicated that there ought to be a strict annual review of programs that are put into place by councils to provide for rejuvenation of fisheries.

I think Mr. Warren indicated that after two and a half years after the current program being in place by his council that they are starting to see some results, indicating, I think, that at the end of the year there were not measurable results to be had on which to judge the program that the New England Council had put into place.

Am I interpreting what you said right, Mr. Mickelson, with regard to this annual review and if the program does not work lets throw it out after a year and bring in something new?

And Mr. Warren, would you respond to Mr. Mickelson's answer?

Mr. MICKELSON. I think to answer your question, yes. The idea of proposing that was to make certain that there was not a continuation of a plan which on assessment could not be reflective of what the plan is supposed to do. And I think to not, at some point, have that review processed you just compound it. It takes a tremendous amount of time, I realize, to change the plan under the current situation. If it is not responsive to the needs but—we have—what I was trying to indicate was that if the optimum yield and it is not being enforced and it has not contributed to the economy of the area and if you cannot say that for a year or two, why compound it? I mean, why allow it to go on. It is not consistent with the Act. It is not consistent with what is intended. That is the reason for stating it.

Mr. WARREN. I would like to point out that the present plan which indicated is two and a half years old is not a static plan. Since it was effective two and a half years ago, we have made 18 modifications of the plan. The Committee currently have proposals to further modify the plan to try to make it work better.

One of the provisions of the plan is there is a technical monitoring group. This group consists of technical and scientific personnel. One from the Northeast Fisheries Center, one from the regional office, one from the state of New York, one from the Commonwealth of Massachusetts, one from the staff of the New England Council, and one from the staff of the Mid-Atlantic Council. And this technical monitoring group are supposed to look at the plan, give its reports and how effective it is, what is working and what is not working so that we can further modify it.

As an example, we got less than three weeks ago from the technical monitoring group a 15 page document outlining the research need to monitor the plan and to further make it effective. This is an ongoing process. The Committee will be reviewing that report and making requests from the center of the type of information that we need.

It is not that, as if this is something that went into effect two and half years ago. And we do not anything. There will be many more changes as we go along.

Mr. SAXTON. You say that plans are kind of evolving and that some kind of a mandate to have a review with a potential drastic change might not be the advisable thing to do.

Mr. WARREN. Well, that is the way we look at it. That as we get recommendations, maybe it is from the Coast Guard, maybe some of the fisheries service, the technical monitoring group, we try to incorporate those recommendations into the plan. We have been doing that for the last two and a half years. And we will continue to do it. And the technical monitoring group will give us a report every year on how they feel the plan is working.

Mr. SAXTON. Thank you very much. Quickly.

Mr. MICKELSON. Just very quickly. There has to be an ascertainable standard, even while these plans are being reviewed. You can have a bad plan. We have had plans up to this Multispecies that has been amended, that was amended many times, and still did not, in my opinion, meet an ascertainable standard of doing good for the fishery consistent with the Act.

Mr. YOUNG. Will the gentleman yield?

Mr. SAXTON. I will be pleased to yield to the gentleman.

Mr. YOUNG. I have heard the term review. Who would do the reviewing of the plan?

Mr. MICKELSON. I think the council, if serving properly, should be able to do its own review of the plans that are out there.

Mr. YOUNG. But I am saying that if they make up the plan and, as Mr. Warren says, they amend it they are amending what they created. They are going to review what they created? What judge? I mean, they are the one that created this baby.

Mr. SAXTON. If the gentleman will yield back.

Mr. YOUNG. Yes.

Mr. SAXTON. I think what Mr. Mickelson made reference to was an ascertainable standard. And if we are going to have Federal ascertainable standards, then do we need the regional councils. If we—

Mr. YOUNG. I do not want the Federal Government involved in this, very frankly. If we had the Federal Government involved in it, we are going to have one big Federal council. And you are really going to be in trouble. If you think you are in trouble now, just try that on for size. It will not fly.

Mr. SAXTON. That is the concern that I have. If we are going to have a Federally mandated standard, in effect, Federal Government at some level is mandating what the councils ought to do. Maybe that is the thing to do. But that is certainly not what this act is all about currently with the regional councils.

Mr. STUDDS. Thank you, gentlemen. In one moment we will go to panel number two. If the Members would indulge, I would like to mention one subject which I think is important that has not been raised and get very, very brief responses from those who care to respond.

In the New England waters we share with our neighbor to the north Canada some stocks of importance to both of us, that we are singularly uninterested in the World Court decision. I do not think

anyone of us has met a cod, or haddock, or a flounder that paid too much attention to whether the World Court thought that boundary was.

We have different management systems, the Canadians and ourselves. Some of you have made reference to the fact that Canadians allow the catch of much smaller fish than we do. Some of those or many of those are being imported into the United States.

Is there any way, given that unavoidable fact, that we can avoid the necessity, the desirability of some kind of joint management with the so called transnational stocks, which somehow do not think much of our political subdivisions around here and insist on swimming past lines that we draw on maps. I wonder if there is any support here for some kind of a joint initiative—our Government, State Department, the New England Council, and the industry with their brethren to the north to see if we cannot get a co-ordinated effort to rebuild the stocks in Georges Bank. Mr. Warren.

Mr. WARREN. Yes. The Council are trying to set up a conference this fall in Portland, Maine with the Canadians so that we can get together and, at least, talk about our two management systems. And we feel that might be a first step towards trying to understand each others systems work. It is probably premature to talk to about sitting down and managing joint stocks, although, I think that—

Mr. STUDDS. How could it be premature? I mean, how many years have we talked about it?

Mr. WARREN. Well, we went through it back in the late '70s with the boundary negotiation and the fisheries treaty.

Mr. STUDDS. Let me phrase it this way. Is joint management of some sort desirable and necessary, regardless of whether the timing is right or do we not know how to do it? Is it something that we really must do given the nature of the stocks?

Mr. WARREN. My own personal view is that eventually we have got to do that.

Mr. STUDDS. Mr. Gordon.

Mr. GORDON. Yes. Inevitably, and the sooner the better, we should sit down with our neighbors both to the north and south and begin the talk about transnational stock management or we will simply continue to destroy our own nest, so to speak.

Mr. STUDDS. Does anybody disagree with that?

OK. Let me thank the panel for your patience. We appreciate it. It has been extremely helpful. Remember that your written statements are in the record in their entirety. We are very much in debt.

While panel number two is coming up, let me just advise people here that the Congress is working harder than you may have thought. And we are not going to break. We are going to proceed directly to the second panel and conclude the hearing prior to allowing anybody to even think about eating.

OK. If we can resume here. I did not know you could put six people there. You did. We will proceed as we did with the first panel, if it is all right with you, asking you, intriguing you, in fact, to confine your oral statements to no more than five minutes. We know that many of you have written statements that are longer. They will appear in the record. And we will go in the order in which you appear here. The staff is offering to increase your quotas

of certain stocks if you are able to even get shorter than five minutes, but they do not really mean that.

We will start with Mr. Joe Brancalone from the Cape Ann Vessel Association. Welcome.

STATEMENT OF MR. JOE BRANCALEONE, CAPE ANN VESSEL ASSOCIATION

Mr. BRANCALEONE. Thank you, Mr. Chairman and the Committee for including us to address the Committee on a matter of great importance to the marine fisheries.

Mr. STUDDS. Make sure you are close to the mic.

Mr. BRANCALEONE. OK. As the Executive Director of the Cape Ann Vessel Association, I represent some sixty vessels fishing throughout the northwest Atlantic for cod, haddock, and other groundfish.

My family has derived its livelihood from the fisheries off of Gloucester for three generations and some fifty years. I served as a member of the New England Fisheries Management Council and as the Director of the Gloucester Fisheries Commission. Also, as a member of the Massachusetts Marine Fisheries Advisory Committee and many other capacities representing my fellow fishermen. I say fellow fishermen because most of all I have worked the decks of boats for, approximately, twelve years.

You have asked my impressions or our impressions and suggestions with respect to the reauthorization of the Magnuson Fisheries Conservation and Management Act. If the objective of the Act was to eliminate foreign fishing off of our coast then it has been a success. Foreigners still have access to a limited amount of fisheries, but domestic fishermen and processors have first priority to the resource.

If the objective was, in addition, to conserve and enhance the fish stocks for a greater benefit of the domestic harvester and consumers, then I think that this assessment is less than favorable.

Many families with generations and decades of involvement in fishing have and are being forced out of the industry, because of the regulations which were imposed, have failed and have hamstrung the law abiding fishermen preventing him from making ends meet.

I would respectfully offer the following suggestions for changes to the Act both procedural and substantive for your consideration.

Number one. The council management process is too cumbersome. Despite strict limits on plant submission, review and approval by NOAA fisheries, it takes too long for the councils to address the problems.

We all recognize that a process such as established under the Act is to assure public input takes some time. None of us would surrender our ability to tell the councils have their plans will affect us.

But the councils will have to work quicker, smarter, and more decisively and—compromise is far more productive over time than are standoffs.

Number two. Industry participation is frequently lacking. Most fishermen have lost interest of the council and the regulations it produces for several reasons. Inconvenient meeting times and loca-

tions, endless and indefinite agendas, a lack of money for travel, and a perception that the council does not listen to those who make the effort to show up. We must make an effort that they do listen. Number three. Council member selection process is too politicized. Most of the initial members of the council were people of experience and stature in the fishing community. Those other members have been replaced frequently with what I perceive by those of us in the industry as part timers, not all but some, whose political ties and contributions, not knowledge of the fisheries, were the deciding factor in their appointment.

Number four. Fisheries needs a higher profile in government. In most other countries, fisheries are cabinet level concern. In the U.S., fisheries are buried deep within Commerce Department and must compete with NOAA for resources and attention with weather service and other agencies.

It is this reason our fisheries are not producing what they could. In fisheries, the U.S. is a Third World nation because fisheries to our Government is a third level concern.

Number five. We need better fisheries data. Fisheries management plans, which had the potential to produce the income of certain groups of fishermen by 10 to 30 percent or more are often based on stock assessments and social and economic data collected 20 years and which have not been updated for, at least, six to eight years.

Management decisions on area closures and reopening are made based on inadequate amounts of information. Data collection has to be upgraded, including the use of more sea sampling of actual fishing operations.

Number six. Existing management efforts must be enforced. Compliance with the layers of measures can be difficult. The primary reason for all this complexity is that the measures, which were first put in place were never adequately enforced.

Instead of the councils and NOAA devoting the efforts to require to make the earlier and simple plans work, new measures were added. Time and time again fishermen have asked the Government to enforce what is already in place before looking for a new way to regulate.

The monies appropriated for the Coast Guard seem to be lost at drug interdiction and other activities. You should consider a requirement that no council can increase the burden of regulations and imposing a plan unless and until it could establish the existing regulations were being fully and fairly enforced. Otherwise, the honest fishermen find their activities further circumscribed and those who violate the regulations have more to gain.

If I may, Mr. Chairman, I have a number of substantive issues as well I would like to—making management measure more economic sense. You have probably heard that fishermen are opposed to limited entry. In many cases, that is true. But as businessmen, we know that it is not possible to make an investment until two conditions are met. A businessman must have enough left over after making the investment to live on and the expected return must be greater than zero. Unfortunately, the Government has made it clear that we cannot expect the same consideration of economic

support that farmers enjoy. So, we are assured that during the stock rebuilding program we will be able to survive.

Without some controls on new entry into the fisheries, any benefits will quickly be lost to those who sacrifice and will go to the Johnny come lately. If current compensation cannot be assured, the eventual return will have to be hired to justify the effort.

Achieving international fairness. Since the division of the fisheries zone between the U.S. and Canada, the line over Georges Bank has caused serious problems for our domestic fleet. The fishermen from Cape Ann are fishing in what are now exclusively Canadian waters. U.S. fishermen have less right to the stocks, which was once theirs, than do fleets from Spain, Portugal, and the Soviet Union.

We need a mechanism to give our fishermen access to fisheries on Georges Bank. Fish which cannot be legally taken out under our management programs are landed in Canada and shipped into our markets. You must take steps to curtail Canada's access to our markets until Canada gives our fishermen access.

Lastly, what we feel is giving U.S. fishermen access to joint venture opportunities. In the area of joint ventures, the mechanisms used to assure preference have intended to perpetuate an age old imbalance of power, which allows the fish dealer to control and exploit the fishermen. The best interest to the nation and the fishermen would be served if fishing taken from the FCZ can be delivered to those willing to pay most overtime.

We suggest that you revise the JV approval and process to provide a right of refusal to a domestic processor, which would allow them guaranteed priority to the resource only if they are willing to meet the competition. Otherwise, joint venture approval will continue to hold the fishermen hostage to the dealer, which in the past has resulted in a great profit to the processor and a hardship to the fishermen.

As you have said, Mr. Chairman, I have submitted my statement to you. I have cut it down quite a bit.

[The prepared statement of Mr. Brancalone can be found at end of hearing.]

Mr. STUDDS. The staff will tell you later how many hearings that entitles you to. Thank you very much, sir.

Next is Mr. James Costakes of the New Bedford Seafood Producers Association. Jim.

STATEMENT OF MR. JAMES COSTAKES, GENERAL MANAGER, SEAFOOD PRODUCERS ASSOCIATION

Mr. COSTAKES. Thank you, Mr. Chairman, and Members of the Committee for allowing us to make a statement today.

My name is Jim Costakes. I am General Manager of the Seafood Producers Association. This Association was organized in 1923. And it comprises of persons who own and operate fishing vessels out of the port at New Bedford. I have been an active participant since 1944. I made my first trip and have been involved with the fisheries ever since. And the last twelve years have also been actively involved in fisheries management issues. The comments in the statement are personal and also reflected by our membership.

We feel that there are several flaws in the existing system and must be corrected or addressed promptly. Otherwise, management by the Council of New England is doomed to failure. What better proof is there than the majority of the constituency state publicly that they have lost faith in the ability of their Council to manage wisely the fisheries resources under its jurisdiction. This is exactly what is taking place in most of our major ports in the northeast. And you can see that by the amount of fishermen that is in this room today.

I believe that we have to accept the fact we will never have sufficient law enforcement at sea and on land to provide the needed regulatory system that is called for in our approach to fisheries management. Especially, as it relates to the groundfish and scallop fisheries. There is no incentive to the fishermen to operate legally for he is penalized financially. In most instances, it is the fishermen that operates illegally who are the receivers of the financial gains.

Limited law enforcement should dictate that our efforts and emphasis should be directed to the types of management that can be observed and enforced by relatively few in numbers. We cannot continue to allow an open fishery without limits on the amount of annual withdrawals. We cannot set minimum fish sizes without corresponding mesh sizes that increase discards that have no value to anyone. We feel that this is a negative approach to management.

When the management act first came into being fishermen and processors in substantial numbers participated in the process. As time passed, interest decreased noticeable. Today, very few people with direct investments or interest participate personally in the process. Public hearings are not well attended. Therefore, policy is established from comments received from small numbers. We have to improve and increase our methods of communication as well as educate our constituents in the process. The lack of credibility that exists with the Council must be reversed.

I personally feel that the Council's staff does not have enough expertise in marine biology. We cannot depend solely on data that might be available from the Center at Woods Hole. When we pass through periods of tight budgets the priorities of the Center maybe different from those of the Council. Marine biology cannot take a second place to economics. But there has to be a balance drawn up in any management scheme. There must be respect between the commercial fishermen and the enforcement agents plus NOAA council. This could be developed through communications via such channels as an annual regional seminar whose purpose would be to clarify controversial and confusing regulations. Each party should respect the others responsibilities.

Another area of concern is the makeup of the Council members. How can Council members make decisions on fisheries management without previous experience? Members of the Council, and especially the Chairman of the Committees, should understand a segment of the fishery they oversee even to the extent that they take a fishing trip to full understand the process.

One of the most critical issues that the industry and the Council have had is the constant cry for more law enforcement. And I certainly agree. But we must be flexible in our approach or we will

defeat our purpose. I would like to elaborate on the areas in which this is happening. For instance, Scallop Management Plan is solely based on a meat count. It took us six year before we were made aware of the fact that there could be a substantial meat weight loss during spawning. We still do not know exactly the time the spawning occurs. It could be as early as September or as late as April. The Council implemented a additional ten percent meat weight tolerance to be effective from October 1st to January 31st. The Council also has asked in this amendment that he spawning activity be monitored for possible changes. To my knowledge, we have not received any information on this to date.

During the first six years of scallop management, vessels were violated for as little as one tenth of an ounce. These vessels had tried to comply. Vessels using coffee cans and other containers forced to mix thousands of pounds of scallops trying to be in reasonable compliance. Then they are checked for compliance by enforcement with sophisticated digital scales. And if they are off the slightest degree are in jeopardy of losing a good portion of their livelihood. In my opinion, this is not the kind of management that industry that can accept.

We cannot continue to implement management systems in areas where there has not been extensive biological and economic data. Although the Council is not perfect and everyone learns by mistakes, we have problems in rectifying or improving any problems and judgments because of the long drawn out process that the system now requires. This problem exists and fishermen cannot wait for months, and in some cases longer, even though the Council recognized and approved any changes that have to be made. I think this is a major problem that the Council has. During the course of the development of the plan, which in some cases can take two or three years, by the time we implement the plan the plan of the fishery has changed. And I think it is a very difficult situation to deal with that problem.

I think the Council develops and submits management plans for review and approval. Then, their participation in the process stops. The regulatory process now begins. The Council does not participate fully in that process. For instance, the Council has tried to submit penalty schedules on several occasions because we missed the boat.

The Council must have more authority in all segments of management and the regulatory process. Industry has tried for the past five years to change the management strategy for scallops. They have been frustrated. They have lost face in our system. Hopefully, new concepts that have been submitted will be forthcoming.

I want to thank the Chairman and the Committee for allowing me to participate.

[The prepared statement of Mr. Costakes can be found at end of hearing.]

Mr. STUDDS. Thank you, Jim. Next is Mr. Barry Gibson. A member of the New England Council. Mr. Gibson.

**STATEMENT OF MR. BARRY GIBSON, NEW ENGLAND
MANAGEMENT COUNCIL MEMBER**

Mr. GIBSON. Chairman Studds and Members of the Subcommittee. My name is Barry Gibson. I am a member of the New England Fishery Management Council, a charter boat owner-operator since 1971 and the editor of the Salt Water Sportsman magazine. It is in my capacity as editor that I appear before you today and I appreciate the opportunity to comment on the reauthorization of the Act.

The MFCMA has tremendous merit in its intent. And I think it is safe to say that a great percentage of fishermen on all coasts of this nation who understand the concept would concur.

However, a number of fisheries, particularly here in New England, are in serious decline. Commercial fishermen have certainly been feeling the crunch for several years. Now, more and more individual recreational fishermen are becoming concerned about their compromised fishing experiences. Party boat fleet operators, bait and tackle vendors, sporting goods store owners, boat and equipment manufacturers, and related support services have begun feeling the effects of our declining resources. In short, those involved with the recreational fishery across its entire spectrum are becoming more concerned as each day passes.

There are a number of contributing factors to our resource problems. Fishery management plans such as New England's ground-fish plan are hampered by widespread non compliance due to an inadequate enforcement capabilities, increased fishing effort, and measures often reduced in their effectiveness during the formulation process in order that they be supportable by industry.

FMPs must have more and sharper teeth, penalty schedules must be readjusted, and funds must be procured for adequate enforcement. Effort control, too, must be seriously considered in the FMP and amendment process, an idea whose time has come.

The recent report on the state of the fisheries by NOAA's administrator for fisheries provides clear evidence that many stocks of fish important to recreational fishermen and the recreational industry nationwide continued to be overexploited and solutions must be sought.

The 1986 NOAA Fishery Management study concluded that stocks should be maintained at some level above that which protects the minimum spawning stock from overfishing, the establishment of a 'conservation standard.' This safety factor should be incorporated into every FMP.

National standard one needs to be fine tuned to address concerns about exploitation. The basis for standard one should be to afford real conservation management for fish stocks rather than to simply prevent overfishing. Stock conservation should be the highest priority in any fisheries management plan.

Additionally, the standard should seek to obtain optimum yield, not just for the U.S. fishing industry as written, but for the greatest overall benefit to the Nation. There have been a number of thoughtful and positive recommendations to the Act proposed by the Council chairman and others, particularly concerning foreign fishing activities in the EEZ and on the high seas, data collection needs, habitat concerns, inclusion of highly migratory species, FMP

enforcement, and funding. Many of these recommendations have merit. And the \$8.7 million funding increase requested by the collective councils for FY 1990 should be the minimum.

Sport fishing is the second most popular recreational activity among American adults, according to a 1986 Gallup poll. National survey statistics for 1985 revealed that people twelve years of age and older spent some 172.6 million angler days on the Nation's marine waters. Recreational fishermen caught some 717 million pounds of fish accounting for 30 percent of the total sport and commercial fish harvest used for food. The economic impact of salt-water recreational fishing in 1985 was \$13.6 billion generating over 285,000 jobs with wages and salaries of \$3.5 billion.

Marine recreational anglers make a significant contribution to the economy of this country. They and the industry that serves them depend heavily upon the good health of the nation's marine resources. The MFCMA system must serve to promote conservation and responsible management and to obtain for the public a reasonable socioeconomic returns on these natural resource assets. Thank you for the opportunity to appear today.

Mr. STUDDS. Thank you, sir. Mr. Jeff Kaelin of the Maine Sardine Council. Mr. Kaelin.

STATEMENT OF MR. JEFF KAE LIN, EXECUTIVE DIRECTOR, MAINE SARDINE COUNCIL

Mr. KAE LIN. Mr. Studds, Members of the Committee, I want to thank you for the opportunity to appear here to discuss the FCMA in the context of its reauthorization through H.R. 2061. I also will comment briefly on Congressman Young's bill, H.R. 1554.

I am Jeff Kaelin. I am the Executive Director of the Maine Sardine Council. I am also here as the President of the Associated Fisheries of Maine. The Sardine Council is a industry funded agency of the State of the Maine and is an organization of the five companies who produce sardines and other canned herring products in nine plants in that state, the only canned herring producing state in the U.S.

The Associated Fisheries of Maine represents some 50 companies in Maine and organizations encompassing operations involved in the harvesting, processing, and marketing of groundfish, mackerel, herring, and lobster, along with members of ancillary industries including packaging manufacturers and banks.

I started as a commercial fisherman in 1973. I am also a recreational fishermen, too. I understand that a principle interest of the Subcommittee today is the focus of the success or failure of the Act as it relates to the region's groundfish fisheries. In this context, my remarks are representative of the unanimous view of the Association's Board of Directors. We are proposing one substantive amendment today, but only in general terms.

The Maine Sardine Council is also proposing an amendment to the Act, at section 306 affecting the consideration of Internal Waters Processing ventures, when the fishery involved is managed by a marine fisheries commission. Our intent here is to help develop a better interstate management system for these fisheries in this region.

While it is true that groundfish landings are down, we do not share the gloom and doom scenario that has caused some to look for dramatic changes in the way that the groundfish resources in New England are being managed. Fishermen and fish processors continue to make money in this business in our state. People with large capital investments are optimistic about the future and believe they will survive given the opportunity to do so. The regulation of the production assets in this business by the market place is still seen by us as the most efficient determinative of who should survive and who should not. This economic theory is seen as the key to producing the incentives and the willingness to accept risk upon which the success of this region's fishing business is built.

While the council system may be far from perfect, we strongly believe that Federal management measures should be developed within the councils and that the system developed under the Act should continue without major changes.

Some positive shifts in management philosophy, which we have seen in this region over the years, are an increased willingness to allow management measures proposed by fishermen to work and a willingness on the part of the National Marine Fisheries Service to both help work to speed up the management decision-making process and punish management-measure violators by strengthening penalties for noncompliance.

Some examples of these changes are the amendment proposed for the groundfish plan which would implement a flexible area action system in order to reduce bycatch and discards in the exempted fisheries, and the requirement that excluder trawls be utilized during the extended portion of this year's shrimp fishery. Both of these are fishing-industry generated ideas. The order that a groundfish boat be tied up for an extended period of time for violating conservation regulations is another example.

We strongly believe that our most serious Federal fisheries management problems come from the inefficient implementation of the Act, principally through a shortage of dollars for research in support of management, and an enforcement record which needs to be improved.

Specifically, we believe that the New England Council's multispecies management plan should be given more time to work. While it is widely believed that stricter enforcement is absolutely necessary, we believe that compliance is becoming a reality. In our fleet, we estimate that about 85 percent of Maine groundfish operators are complying with today's groundfish management measures. When scrod represents only about 20 percent of the Portland Fish Exchange's cod landings, we are led to believe that our fishermen, for the most part, are complying with today's groundfish regulations. While a five and a half inch diamond may not be the ultimate gear restriction, its use has definitely limited the harvest of sub-legal fish.

This is not to say that we could not be managing smarter, however. One suggestion that we would like to bring to the Committee's attention today is a request that permits be provided to individual fishermen which could be revoked when the individual has been found guilty of violating a management measure. A combination of revokable vessel and fishermen permits would help make the cur-

rent groundfish plan work better by eliminating the opportunity for bad actors to continue fishing, paying fines as a cost of doing business.

Of course, when the word permit is mentioned, the word fee is coming from some quarter. Let us address this point by stating that while we as an organization are not endorsing a fee system for fisheries management today we believe that H.R. 1554 is on the right track when it comes to setting the levels of fees based on agreement within the council system and tied to each specific council's needs. We are concerned, however, that even dedicated revenue accounts would be raided and that additional fees for management and conservation do not necessarily mean more money to work with.

We believe the most serious flaw in the creation of the FCMA has been the resulting erosion of support for consistent interstate management, since the creation of the Act.

The amendment to section 306 that I spoke of earlier is designed to begin to create a interstate management regime for the herring resource which is being subjected to a proliferation of allocations to foreign processing vessels today with nearly a complete absence of information upon which to begin to manage this fishery.

While we hold the ability to be flexible and move from fishery to fishery as nearly a sacred tenet, the Maine Sardine Industry's biggest concern over the state of the region's groundfish resource is the impact that it is having on other fisheries often described as underutilized for want of a better term. As traditional stocks become stressed, fishermen begin to look for other opportunities and herring in this region is being viewed as one of them.

We submit that IWP allocations in the herring business today are being made based on very weak or nonexistent scientific information. The states do not even have an idea of what the traditional harvest levels are outside of the sardine industry. This concerns us and we hope that we can work with the Subcommittee to address this absence of coastal state fisheries management consistency.

On a final note, we hope that the Subcommittee will continue its efforts to ensure that the majority of regional council appointments in the U.S. go to individuals with strong ties to the commercial fishing industry. While I believe we have struck a balance between commercial and recreational interests within the New England Council, this is not the case everywhere.

In closing, I want to thank the Chairman and the Subcommittee for your continued support of this important food industry. We often do not think of it in those terms, but that is indeed what it is.

We particularly appreciate your continued focus, Mr. Chairman, on the state of the environmental health of our ocean. Clearly, without healthy ocean seafood consumers, fishermen and fish processors have much to lose. We believe that we must keep in mind that all three of these groups derive benefits from the management of our fisheries resources and from a clean ocean environment. We need to remind the Federal Government, particularly the Department of Commerce, that we are working to manage an extraordinary food supply and not simply fishermen.

Environmental health and food safety are equally as important as the development of fishery management plans. All of us with

these interests must continue to commit the time, energy, and dollars to these resources and the environment that they are found in.

Before I close, I would like to take a moment to summarize my view of some of the proposed changes to the Act suggested by the fisheries services at the Washington hearing last week.

Changes which we could not support include a reduction in foreign fishing fees and the authority of NMFS to charge fees in addition to the administrative costs of the permitting system, particularly in the absence of a dedicated account.

Those of us who depend on the so-called underutilized species like herring would be hurt by reducing foreign fishing costs for access to these resources, which are the only ones that they currently have access to.

I note that the Department of State has not made this suggestion. Our difficulty with fees continues to center on the fact that fishermen are clearly not the only beneficiaries of our fisheries management efforts as NMFS continues to argue in support of fee increases.

We support the suggestions that data from JVs and directed foreign fishing operations be excluded from confidentiality provisions, that a regional capacity and intent standard should be established for IWPs, and that civil penalties should be increased, as NMFS has suggested, from \$50,000 to \$100,000, or \$25,000 to \$100,000.

We also support the idea that NMFS reimburse the states for a portion of their costs under cooperative enforcement agreements, although we are opposed to reimbursing other Federal agencies for their enforcement costs from the meager NMFS funds.

Finally, speaking also as the owner and operator of a small passenger carrying vessel on the Penobscot River in an area where seals are frequently sighted, I want to support Congressman Young's suggestion in H.R. 1554 that a fee be assessed on individuals paying for the opportunity to view marine mammals in U.S. or state waters. I personally would endure any amount of paperwork to enlist mammal supporters and enthusiasts in the effort to pay for their management.

If you have any questions, I would like to answer them.

[The prepared statement of Mr. Kaelin can be found at end of hearing.]

Mr. STUDDS. Thank you. Thank you again, especially, for the point about fishermen being plumbers of the seas. I think Mr. Young and I have tried to get that across in Washington for many years.

Mr. Howard Nickerson of the Offshore Mariners Association. I will not tell them how far back you go, Howard.

**STATEMENT OF MR. HOWARD W. NICKERSON, EXECUTIVE
DIRECTOR, OFFSHORE MARINERS ASSOCIATION**

Mr. NICKERSON. I am not going to tell.

Mr. STUDDS. All right.

Mr. NICKERSON. Chairman Studds, Members of the House Subcommittee on Fisheries and the Environment, invited guests, ladies and gentlemen, I am Howard W. Nickerson, Executive Director of the Offshore Mariners Association.

Offshore Mariners Association is a non for profit organization of the 125 members engaged in the commercial fishing industry of the greater New Bedford area. We represent Captains who, for the most part, are also vessel owners. We also represent a few non fishing owners. And we do not represent boats, per se.

The legislation to reauthorize the Magnuson Act is necessary and more important to some species in areas of the United States and others. Unfortunately, it has not worked out well for some species in areas because of the uneven manner in which it has been administered, particularly on the Atlantic seaboard.

In some areas, I understand that the management councils have done a better job as caretakers responsible for the conservation and management of the resources entrusted to them than others.

Likewise, enforcement has been better and more even-handed portwise than it has been here on the Atlantic seaboard. In New Bedford, I guess we are lucky because we get the majority of the action when it comes to enforcement.

I agree with the statement previously made by Congressman Studds that landings of our bread and butter species such as cod, haddock, and yellowtail, and winter flounder are at record low levels, half of what they were a decade ago. Less than a quarter of their levels during the 1960s. And the trend for the future looks worse.

Current management efforts are clearly not sufficient. There is nothing pleasant about these facts. But they cannot be denied. And action to remedy them cannot be delayed.

I cannot, however, agree with Congressman Studds, who also stated that the 200 mile limit law has achieved its primary purpose, which was to ensure that decisions about the future of American fisheries will be made by American fishermen.

Too many councils, including New England, do not have true bona fide fishermen sitting as members. Debating the issues or offering solutions and then voting on the motions for true conservation and management regulations for the best interest of the resources and the commercial fishing industry.

Likewise, some councils, including New England, do not really listen or, perhaps, do not hear or care the message that their true working fishermen advisors and representatives, who have been authorized to speak on issues say to them; consequently, many commercial fishermen advisors have quit coming to committee and Council meetings and their presence or lack of it does not seem to be missed, or worse yet, question why they are not in attendance.

A recommendation, if I was asked to present one, simply put is why cannot the original intent of the Act, to achieve its primary purpose, that decisions about the future about American fisheries will be made by the true working fishermen. Thank you.

[The prepared statement of Mr. Nickerson can be found at end of hearing.]

Mr. STUDDS. Thank you very much, Mr. Nickerson. Finally, Miss Lucy Sloan, speaking for the Point Judith Fishermen's Cooperative. Welcome back.

STATEMENT OF MS. LUCY SLOAN, POINT JUDITH FISHERMEN'S
COOPERATIVE

Ms. SLOAN. Thank you, Mr. Chairman. First, I would like to say that I think the system works. And where it may not, or where it needs additional work, I remember what I was like when NMFS was managing the fisheries. And I will take any problems that we have with the council system over going back to that again.

I think I have often said, ruefully, and I have sometimes wondered lately if it were not an idea, that before our council member took the oath of office and was seated as a council member, he would be required to pass an open book quiz on the FCMA. I think there a number of council members who do not know what the law says, much less what the legislative history says. And I think that is a disadvantage and I do not think it is fair to expect them to expect them to operate within the framework of something that they have not had a significant amount of involvement with.

I think Howard's concern about whether fisherman are coming to meetings, whether fisherman are on the council. One of the beauty's of the council system, at least as it works in New England, I must say that I have had some problems with some of the others, but in New England any member of the fishing industry, in any capacity, who wants to make his viewpoint known has the opportunity to do it. So, there, if a fisherman does not come to a meeting then he can hardly complain because his point of view is not known, unless he is part of group who has a representative making his views known. I am not sympathetic with the idea of people walking up and down the bulkheads saying it does not work, it does not work, it does not work, and they have never been to a council meeting.

So, basically, for all of its problems, I would still prefer to work with the council system. And the fact that I am here on behalf of my fisherman, I think indicates fairly clearly that the Coop feels that way.

Jimmy Warren very effectively presented the Council's concerns on enforcement and data. And the Coop shares those concerns. I think that one of the things which becomes increasingly clear is that fisherman will pay attention if they think the management measures are rationally. And what fisherman think are rationally may not be what bureaucrats or managers think are rationally. And I am getting a little weary of listening to this, well, we will fine tune this and we will fine tune that. Because what we are fine tuning it to is a single discordant note. And I think that in terms of providing rational management measures, ones that can be made to work, ones that can be made to be enforced, yes, we need more participation from the industry. But we also need greater cooperation from the Executive Branch.

I, too, would like to comment on Mr. Young fee bill. I, particularly, like the fact that while it is concerned with research and other management programs, it strongly opposes limited entry. The Coop's position is in opposition to what is called limited entry that has come to mean a particular kind of mechanism. And I think that looking at limited entry, everybody says well we would not, we would grandfather everybody in. If you are going to grandfather

everybody, in forget it. Because it is not going to work. If you are going to do that, you would be better off to put the administrative costs of what a program like that would cost into enforcing regulations which apply to anyone in the fishery, actual or potential.

There are—Vaughn was talking about direct measures and indirect measures. Warren Magnuson, when he was Chairman of the Appropriations Committee, could not get a relatively small buyback program for the salmon fishery. Depending upon which variation of the discussion of the New Zealand ITQs you hear, the up front buyback program was between \$48 and \$55 million. Given that the Department of Commerce proposed reauthorization level for the FCMA was \$56 million. I really wonder how realistic it is to talk about using systems that do not reduce the fisheries up front.

I think that where we are going is, at least in New England, I have a strong sense that there are a number of people, particularly in the National Marines Fisheries Service, who would like to see six vessels fishing with ten inch mesh. Because that they probably could enforce. And that is what I mean by getting to a single discordant note.

I am interested that when Jim Brennan became the Assistant Administrator for Fisheries he changed the name NOAA fisheries. And I tweaked him once and said did you do that to get away from the fact that there are a number of people in the industry who think NMFS stands for No Money For Services? And he just sort of looked at me blankly. And I think that is one of the problems. And not only has that been a problem, and that is not the fault of the National Marine Fisheries Service, although the utilization of some of those resources. Two people justifying more than four people traveling I think is an interesting waste of money, if that, in fact, is the case.

But I also have been concerned since April 1976 when I got into quite a contest with Herb Blatt, that NMFS never did want the council system. And I look at the revised, the proposed revised, 601-602 guideline and I have to wonder if the battle that was joined in April 1976 is not still going on.

You take the provisions in 602, the definitions and the descriptions of what these guidelines should be about, and there are triangulation in which with which defends in the councils to limit the flexibility. And I can only be very glad that you all several years ago declared in an amendment that those guidelines would not have the force and effect of law.

Another thing which concerns Point Judith, as cooperative fishing on nontraditional species, is that when our vessels go out breach way there is likely to go south as any other direction. So, two of the major species with which we are involved, squid and butterfish are managed by the Mid-Atlantic council. And for us that has meant some very uneven, it certainly has showed what the difference is how councils operate can do in terms of industry involvement and council response and that sort of thing.

But when we originally looked at the council system we discussed for a long period of time having a single council from Maine to Cape Hatteras. Biologically, that makes sense. And in this era of less and less money with which to do management, I wonder if it is not time to reconsider that possibility.

Toward that end, I have asked that a paper which David Borden and Guy Marshacel wrote on the question of joint council management and how different distributions of stocks and landings might be handled. It could be made part of the record so that it would be available to the Subcommittee in its deliberations.

Finally, on an international note, I would like to say that increasingly for the Coop the greater potential growth markets are Japan and the European Community. Which means that we spend a great deal more time looking outward, less looking at the domestic markets for a number of reasons, the least of which is the Canadian free trade agreement.

And we have had quite a lot of very helpful information on some of the stock of concern to us come from the regional office. Dick Roe has had Bob Ross emphasizing getting material pulled together. And the quality of that work has been very useful to us and for that reason, among others, we appreciate the Committees support of improving trade coordination within NOAA under the Deputy Assistant Secretary for International Interests. Because as exports become an increasingly large part of what the co-op does that kind of coordination becomes very much more important to us.

In terms, Mr. Studds, of your question about Canada the problem with Canada remains what it was in 1976. Their management system is fundamentally different than ours. Given NMFSs substantial lack of philosophic support for the New England groundfish plan, I am hardly eager to have the Council management system displaced by the National Marine Fisheries Service on the grounds that since Canada has no analogue to the Council, it must be government to government. I think that would be a regression of everything that we have made work in the council system. And that is the stumbling block that I see.

I think that discussions, I think this technical conference that we have been trying to get the Canadians to work with us on for going on four years now, I think, is vitally important. But even so, the fact that the systems are fundamentally different will present a problem. Because those of us in the industry who have been involved in the Canadian issue for a number of years are not going to want to see the Council preempted in any subsequent discussions. Thank you.

[The prepared statement of Ms. Sloan can be found at end of hearing.]

Mr. STUDDS. Thank you, Lucy. Do not panic. We are not suggesting that NMFS takeover management of groundfish, nor is this likely to happen.

Don Young was asking to explain where it was you were from. I said it was the state of Rhode Island. He said where is that. He said he has heard about it several times, tried to find it on a map, but had been unable to locate it.

Ms. SLOAN. His colleague from Rhode Island will be disappointed.

Mr. STUDDS. He is not here and we are taking advantage of that. I should also warn you all that Mr. Young and I were discussing from time to time and have been, and we are thinking about it today. We are sort of tired of reading about Breaux-Wallop this and Magnuson that. And we think that there is just, at least, an arguable possibility that maybe some legislation emerging from

this Committee this year will be called, are you ready for this, the Young- Studds. As a matter of fact, Mr. Young is suggesting re-naming all of those other things. So, stand by.

Before we get to questions, let me first say that the Members of the Subcommittee have a variety of overlapping and conflicting flights home. And I am going to be leaving very, very shortly. There are some individuals present who had asked permission or asked if it was possible to present their testimony. The answer is yes and no. Yes, we will be pleased to take in writing. No, I regret to tell you it is not possible to have you present it orally because there will be nobody here to whom to present it. We are running considerably slower than I had anticipated or hoped. I knew that we would. I had hoped. One always hopes we would be quicker. I do apologize for those of you who wanted an opportunity to be heard, take some consolation of the fact that, I think, the staff knows who you are and will see to it that your written statement is not only a part of the record, but is given to each individual Member of the Subcommittee.

Having said that, I think, I am going to defer, initially, to the men who has the first plane out of here, which is the gentleman from Alaska, who can proceed to ask geographical or any other kinds of questions he would like.

Mr. YOUNG. Thank you, Mr. Chairman. And for those who would like to have presented their testimony and will be unable to, this Committee works very well, as the Chairman said together. The staff reviews all testimony. And these are public hearings. We will have a series of these. We will have them in Washington and around the areas.

We try to take all the input and come out with something, hopefully, everybody will have some agreement in, although we cannot solve everybody's problem. But to try to improve the Act as originally it was passed.

This is the second panel that I have heard, Mr. Chairman, that has commented on the Council. And first, let me say that the reason that it was originally set up was that the new governor down there was responsible for one nominee. I know of more. The governor is the closest person to those that he represents in the fishing area was to appoint the Council. And I think that that is a good premise.

We did try to tighten it up once before, I think after the original Act, where there had to be some knowledge and acquaintance of and etc. And what I am hearing here today is that you would like to have it tightened a little more where you have fisherman and processors involved and not deli owners or something like that because they are selling fish. Is that correct.

Ms. SLOAN. Not necessarily.

Mr. KAELEN. If I could speak to that——

Mr. YOUNG. There is a difference of opinion on the Council. Go ahead.

Mr. KAELEN. I think the authorization is there. We have the knowledge and experience standard which is the change from the last reauthorization. I think the problem is at the Secretary of Commerce level currently. It certainly is a political situation. Fisheries are very political, although bipartisan. We all know that. But

it is political and that is just the way it is. I think that the calls that are being disparaged are coming out of the Secretary of Commerce's office. I think that is where the problem lies.

Mr. YOUNG. Lucy, just a short comment.

Ms. SLOAN. I think that Jeff is right. I do not think diversity is a bad idea. I think some of the people who have been very productive on the councils might not be able to be there if the criteria were too much more restricted.

I think it is incumbent upon the industry to work with the governor and work within the system in Washington to ensure that we do not get Republican committee women on the Council, which is one of the things we are facing.

Mr. STUDDS. Which part of that do you object to?

Ms. SLOAN. Because that is not the basis for it.

Mr. YOUNG. OK. Mr. Gibson, I ask this question to Mr. White. I know you kept alluding in your presentation about for the best and the wisest public use. You are not suggesting, in fact, that if we go into a limited entry type concept of some kind of limited effort that the sports fishermen are excluded from that effort?

Mr. GIBSON. No. I would not insinuate that at all. I think that if it is found that the—if it is necessary for the sport fishermen to enter into some sort of a limited entry program for the benefit of the stocks, I would be supportive of that.

Mr. YOUNG. The reason I asked that is we have a very serious problem in Alaska. We have a tremendous conflict between the commercial net setters, which you do not have here, in the—and sport fishermen. And there is a tremendous resource there available. But the problem is a lot of the sport fishermen want to catch a fish on the first cast. And if they do not, they object to the commercial fishermen.

So, we have this constant battle between the different groups. And I hope the sportfishing associations and the rest of them will work together with the commercial because we are dealing with a species or species and that is fish. And I do not want anybody to get involved in, well, it is mine and not yours. If it managed correctly, there is room for both. And it is management concept. But there is that tendency to do so.

One last comment. The gentleman that first talked. The Chairman and myself agree that you are farmers of the sea, but please do not relate that you want to be like the farmers of America right now. I come from an agricultural area. And I have watched a farmer that had no paperwork at all go into a full time paper job before he plants one seed. And because of bottom of prices, the top of prices, the acres that can be put into the units that are sold, it goes on and on and on. Please try not to get into that myth. Mr. Chairman, I want to thank everybody in the room. I do have to catch an airplane. I apologize. We are in the process of going to back this afternoon in Washington, D.C. And I will see you there tomorrow and the rest of my members.

Mr. STUDDS. You see on behalf of the folks from New England how much we appreciate your being here and not—I know there was pressure—

Mr. YOUNG. I know there was.

Mr. STUDDS. We very much appreciate that. On your flight, if you look very carefully and very quickly, you might see Rhode Island. We thank you very, very much, Don. In fact, our appreciation is so extreme that I have committed to leave Cape Cod in August and go to Alaska.

I will go to the person with the next flight, the gentleman from Maine.

Mr. BRENNAN. Thank you, Mr. Chairman. I want to say I do not think that I knowingly or willfully ever nominated or supported any Republican committee woman for the Council. I do want to direct a question to Jeff, though, in regard to Maine. You say that there is 85 percent compliance with the rules now in Maine?

Mr. KAELIN. That is what we estimated in the Associated Fisheries of Maine within our Board of Directors. We have several fleet operators involved, O'Hara, Odlin, Tetro, a number of people involved in the groundfish business up there. There is a widespread belief in Maine that the majority of people are complying. We came up with the 85 number in preparation for this hearing because we think that is about where it is.

I am also on the Board of Directors of the Maine Fishermen's Forum and we had our fifteenth or sixteenth fishermen's forum this spring. I was there speaking to Bob Fogg, who is the head of the enforcement agency in Maine, and the feeling was that Maine fishermen recognize that they have a stake in the management process now and that they are working with it. They believe in it and they are working with it. I think that Maine has a long-held conservation ethic. I do not want to sound like a pollyanna here.

Mr. BRENNAN. That is all right. You can say anything you want positive about Maine.

Mr. KAELIN. But it is true, Congressman. And that is the estimate based on fact, in our view.

Mr. BRENNAN. What would the other gentlemen, what would you feel the compliance is in Rhode Island and Massachusetts?

Mr. BRANCALEONE. We are 100 percent compliant.

Mr. BRENNAN. Pardon.

Mr. BRANCALEONE. We are all 100 percent compliant. Just to come up with an 85 percent that is great. Because everyone knows that the nature of the beast and the fishermen are—you and I are the two honest ones and the rest of them are liars. It is pretty hard to come with a—you would say 80 percent, 85 percent. I think more and more are complying.

Mr. BRENNAN. There is a growing compliance?

Mr. BRANCALEONE. Yes.

Mr. BRENNAN. Lucy.

Ms. SLOAN. I think that it goes to the question of whether the fishermen think it is rational. If it is, they view it as a long term investment and they will try to keep—why people are talking about raising the penalty so that the penalties do not just become a license to violate.

Mr. STUDDS. If the gentleman would yield for just one second.

Mr. BRENNAN. Sure.

Mr. STUDDS. On that point, I had made a note in the Washington hearing a week or two ago, the chairman of one of the Councils, I think it was the Mid-Atlantic Council, said the problem is, and I

am quoting him, "a group of pirates, representing about ten percent of the fishermen." Does anybody for or not for attribution want to agree or disagree with that?

Mr. BRANCALEONE. I would have a tendency to agree.

Mr. STUDDS. You would agree?

Mr. BRANCALEONE. I would also add that I think the compliance is coming, is getting more and more. That is because the Coast Guard has been beefed up, money has been pumped in for the past year. And I think that is why you see more and more people—and also, NMFS has been pulling boats in and tying them up for a couple of months and putting some heavy duty fines. So, I think this is what you see is the reason for it.

Mr. STUDDS. Is there general concurrence here that the problem lies to a large extent with a relatively small group, plus or minus ten percent, who are absolutely contemptuous of the whole situation?

Mr. KAEIN. I think that is the feeling in our group. Enforcement presence is what is important. If you do not have that presence, then there is not as much willingness to comply. But in my fifteen years involved in this business, I think we have come a long way. That is why I say this is an evolutionary process and needs to be supported.

Fishermen now are recognizing they have a stake in the conservation regime. It is not going to go away. The Federal management system is here to say. And I think that there has been considerable progress made. It needs to be supported and the enforcement presence needs to be beefed up.

Mr. STUDDS. I apologize for taking the gentleman's time.

Mr. BRENNAN. Basically, then there is a real correlation with additional enforcement officers and increasing the percentages that are complying?

Mr. KAEIN. That is what we believe. To come here and say we would like to see permits revoked today is a big change from ten years ago. Nobody in the fishing industry would have come before this Committee then and said we want permits revoked. I think the people who are honest and trying to comply are fed up with the situation and we want to see some more serious penalties applied.

Mr. BRENNAN. And you think that that would provide a greater deterrent and enhance that?

Mr. KAEIN. I think there is a wider group of people in this business that believe that today.

Mr. BRENNAN. Thank you. Thank you, Jeff.

Mr. STUDDS. Jimmy, you wanted to say something—

Mr. COSTAKES. I just wanted to add that the problem is that if the penalty schedule is such for a flagrant violation and there is a lot of nit picking violations out there too. And I think that is where it is not distinguished. And that is where I think you lose a lot of the fishermen. I mean, because someone does not have a free license available in the pilot house, although he is registered and you can find it in the computer, you get a \$1,000 fine or something like that, I think there is where you lose respect of the enforcement. And that is where you lose people. I

think that is where the Council loses that kind of flexibility. I think this is one of the major problems that we have. I think the

Council in its wisdom in devising a plan, trying to implement a plan, and that is where I said in my statement, that is where the situation ends. I think the Council should have the authority to go beyond that and say, okay, if he does this, this is the kind of situation where you have to review it. And we accept it. But the way the situation is now, we do not have anything to say. And that is where, I think, the whole system falls apart.

Mr. BRENNAN. Thank you, Mr. Chairman.

Mr. STUDDS. Thank you. The gentleman from New Jersey.

Mr. SAXTON. Thank you, Mr. Chairman. I think your airplane leaves five minutes before mine does. It seems to me that one of the major themes, not only of your testimony, but of the questioning has been related to Council appointments. I think Members of this Subcommittee have looked on numerous occasions as to one, whether or not the criteria for a appointment should be tightened up. Number two, how the appointment should be made. And number three, whether or not we should change, in some way, the categories from which appointments are made.

And I know that there is a difference of opinion on the panel as to how that might be done. And I am not sure at all whether it truly needs to be done. I am quite familiar with the Mid-Atlantic Council. And I am pleased with the representation from the industry on that Council. I know that there used to be some lawyers on it and they disappeared for one reason or another. But that Council seems to have become quite representative, in my view, of the industry.

I am curious as to whether you have any specific recommendations or ideas about how you might like to see appointments made in some different way in authority. Lucy.

Ms. SLOAN. I think that it does not need to be changed. I think knowledgeable and experienced covers it. It is that the industry has to work more closely with the governor on the nominees and track the process when it goes to Washington.

I think that one of the disadvantages we have is that it is often hard for a fisherman to sit as a council member. However, we do have fishermen as industry advisors. And anyone can come to a council meeting and be heard. The distinction between industry advisors and a fisherman who has something to say is very blurred.

So, I do not see—I am worried that if we started trying to find—we would simply go behind because we would start getting more and more specific. And pretty soon we might do ourselves out of people who could make a contribution. So, I would against changing it. Simply, trying to work to make the nominees more nearly what we have in mind so that there is less flexibility politically.

Mr. SAXTON. Thank you.

Mr. KAELEN. I would have to agree with that assessment. I think we have a good commercial representation in this Council. There are some Councils with problems and some of us have joined that battle, a political battle, to try to have the barometer go other way, and have more commercial appointments. Like I say, those decisions are being made in the Secretary's office. In this area, the Governors' lists have been good ones. I would not change the Act. I think the knowledgeable and experienced standard which came

from changing the one single word, the or, which we changed a few years ago was what needed to be done.

Mr. SAXTON. Do you find the councils to be responsive to fishermen, generally?

Mr. KAE LIN. Yes, sir. I do. I am an ex-fisherman myself. I have been involved very much in the process for a number of years. And it is a political process. But I think the industry has organized itself better over the years. There are more groups that are speaking as a unified voice, one thing that Congress has asked us to do for a long time. And I think it is responsive. But you have to get off your butt and do a little homework. It is a lot easier to sit home and complain that everybody is making decisions against you, but I, frankly, think it is a responsive system.

Mr. SAXTON. Do you think the industry enjoys this system more than it would enjoy a system that tried to regulate out of Washington, D.C.?

Mr. KAE LIN. I know this member of the industry certainly does. Yes, sir.

Ms. SLOAN. I am not sure enjoy is the word.

Mr. KAE LIN. I think the council system is a step in the right direction. It is not perfect. But it needs our support. And research is another issue that was talked about. There is a gap, a lack of information. And I know that Vaughn is stretched nine ways at Sunday at Woods Hole. He mentioned that he would like to see scientists and managers get closer together.

We would like to see that in the industry, too. We had a herring meeting recently. And the guys from Woods Hole were not there the only day that the industry was allowed in, almost as if we could not understand the first two or three days of discussions. Well, I think that that should change. The industry can understand science. And I think Congressman Brennan and Senator Mitchell's marine research bill could help coordinate and provide some accountability and get the industry more involved and get away from this ivory tower approach that the scientists have long taken.

Mr. SAXTON. Thank you, Mr. Chairman.

Mr. STUDDS. Thank you.

A couple of things. First of all, I understand that State Representative Robert Duran, a member of the legislature, a member of the Natural Resources Committee, and a member of the Atlantic State Marine Fisheries Commission. I understand Representative Duran you have some testimony you would like to submit for the record. We are not going to be able to hear you orally, if you do not mind. But we will be very, very pleased and proud to take your testimony.

Mr. DURAN. Actually, Mr. Chairman, I do not have anything prepared in writing. But I would like to forward that to you.

Mr. STUDDS. We would appreciate that.

Mr. DURAN. Just a quick statement given the time constraints that you are all under. I am on the Natural Resources and Agriculture Committee myself.

Mr. STUDDS. You folks testify standing up where you work, don't you?

Mr. DURAN. Yes.

Mr. STUDDS. If you are more comfortable that way. Try to be very brief, if you will.

Mr. DURAN. I sit on the Atlantic States Marine Fisheries Commission appointed by the Governor a couple of years ago. I would just like to come before you to recommend the 200 mile fishing limit reauthorization. And point out that I strongly feel that, the two years that I have been involved, that not only has it been over-fishing, but I think the major problem with our fisheries right now is pollution—enforced pollution, and other types of pollution, ocean dumping and what not, which has contributed to the decline of our fisheries.

In addition to that, I think law enforcement and the lack of law enforcement out there. I know it is a problem here in the state of Massachusetts to be able to cover as much coastline that we have to cover. And we do not have the bodies to do it. I think that is another problem. I just wanted to comment, express my sentiments.

Mr. STUDDS. Thank you. We appreciate that very much. And we will be pleased to take anything you wish to submit in writing.

We are getting towards the end. And I am sometimes tempted to, at this stage, to ask everybody, given the fairly long hearing, what one single piece of information or judgment you would like us to take back to that distant place where we work? And while you are thinking about that, I want to make sure that I understand one thing.

I hear a pretty broad and, someone has acknowledged, a relatively new consensus, I think, that we could very much use some stiffer penalties and some strict law enforcement, so that the serious violators ought to be really socked.

Leaving aside for a moment what Jim called the nitpicking, that if you had a major repeating violator, that genuinely severe penalties ought to be imposed. Is that what I am hearing from everybody? Are we talking about the suspension of the right to fish for a period of time? Are we talking about anything stronger than that?

Ms. SLOAN. Depending upon what it is.

Mr. COSTAKES. I think in some cases that right is already there.

Mr. STUDDS. If I hear you correctly, you are asking that these things be actively considered and imposed upon such violators, that the time has come to let people know that this is not a light matter?

Mr. BRANCALEONE. Please let me address that, if I may. Since day one, I think that if it had been done then we may not have been in the predicament that we are in now. When you slap someone on the hand and you let them go it is not a deterrent.

The people that were doing it in the past were, maybe, mostly people that were greedy. And if you do not start to implement some sort of stiff penalty, I think that you are going to see is that the changes that the people will begin to do it is the people who are just trying to survive.

It is a matter of survival now rather than the way we are headed.

Mr. STUDDS. I think that is important to get on the record. Let me just say. I want to, particularly, give those three folks a chance.

They have not been heard from in sometime, if they want to leave us with some wisdom from their own perspective.

As I said at the beginning, we could have spent an entire day celebrating the ways in which the statute has been successful. That might have made us feel better but it would not have accomplished very much. Even here in New England, I think, because we have been focusing on the major problems, we have not focused on the fact that things seem to be okay these days for scallops, lobsters, and for other things. But we are here to try to correct what needs correcting. Clearly, in the New England region, it is the groundfish problem. It is here, it is worse, some people have testified, than it was a decade or more ago when we began this process. That is not good news. And we need to do something about it.

Is there anyone, on the panel of six, who feels having heard what they have heard all day that there is one final or summary or most particularly important piece of wisdom you want to leave us with? And I am going to end with the three folks over here. It is not compulsory. Lucy.

Ms. SLOAN. I am interested in further discussion of the fees. Because we have got to do something one way or another for better enforcement and better data.

Mr. STUDDS. Succinct and to the point. Mr. Nickerson.

Mr. NICKERSON. I am interested in the serious violators. Too many times we have nitpicking over a guy who only has a small violation. And we have nitpicking sometimes where some of the same people are being harassed almost to the point where I have not found anything for three trips, so he must be doing something illegal this trip. The serious violator, yes.

Mr. STUDDS. Is there, generally, a feeling that we know who the serious violators are in each port?

Mr. NICKERSON. Well, we—

Mr. STUDDS. It would not take a great deal of imagination in listening to figure it out?

Mr. NICKERSON. We have a lot of boats. And in the time that they have been enforcing I have never been approached, never been aboard there. I realize three guys—

Mr. STUDDS. The Commander is taking notes.

Mr. NICKERSON. I realize they need more money.

Mr. STUDDS. That is what he was writing down.

Mr. NICKERSON. We are unlucky in the Bedford, you see. Because they have Coast Guard in the harbor. They have Coast Guard at Kitty Hawk. And they have Coast Guard at Woods Hole—we can get picked up any day of the week. Sometimes twice on Sundays.

Mr. STUDDS. Do not pick him up. Anyone else. Mr. Brancalone.

Mr. BRANCALEONE. I just wanted you to go back and, maybe, give the message that, especially from the Cape Ann Vessel Association, that we do not feel that the whole problem has been the Act.

Mr. STUDDS. I do not really think anybody has testified to that.

Mr. BRANCALEONE. No. I think that the problem—we feel that the problem is, the biggest problem was the lack of access in the Canadian waters. Especially, in our area and the people up in Maine, who spent practically seven to eight months out of the year up there where the major fishing takes place.

We are all bunched up. And we are up on small boat grounds. The offshore boats are now on small boat grounds. The Port of Gloucester used to be one of the number one ports for landing of whiting. Because of the influx of South American whiting coming into the country, the cheaper price that packaged to—that could be paid to the fishermen, we have been pushed out of that market.

If the Congress or the Government would address some of these problems, I think that you are going to see—what we need to do, I guess, and the bottom line is to get off these species. And we cannot do it without your help.

Mr. STUDDS. Anyone else? Mr. Kaelin.

Mr. KAELIN. I would just strike the same theme on lack of research data and enforcement as being the most important issues for us. And back on fees again, we have not supported fees in addition to what we are already spending as taxpayers, but it may be time to do that. If you do consider fees, Mr. Young's proposal to have the money go to the councils, and have those of us involved help to allocate where that money goes, I think, is the right way to go.

Mr. STUDDS. Easier said than done, as you probably know—Mr. Young may like the idea, I might like the idea, everybody in this building may like this idea, but there is something called OMB.

Mr. KAELIN. But I think without that much of a guarantee that they are going to be dedicated, fees won't be acceptable. I think we are just going to have to continue to strike the theme that many people benefit from the fishing industry, not only fishermen. And restate that it is a Federal responsibility.

Mr. STUDDS. Mr. Gibson. You had your turn, Lucy.

Mr. GIBSON. Yes. I think I would just like to close by saying I think the time has come where those involved in the FMP process should really have to look at the effort control as a very substantial way of managing our fisheries. I think the time, it may not have been appropriate ten years ago, or even five years ago, but I think now is the time to really look carefully at it. Thank you.

Mr. STUDDS. Mr. Costakes.

Mr. COSTAKES. Yes. I would like to clear the air that all fishermen are crooks to begin with.

Mr. STUDDS. Ten percent was the proposition on the table.

Mr. COSTAKES. Well, I do not know even about the ten percent. I think one of the problems that I have is I kind of make that relationship between the IRS and what happens there.

Mr. STUDDS. Do not bring that up, please.

Mr. COSTAKES. When you force people into doing things that are totally not part of the system that they have been doing for generations, you are going to have a problem.

And I do not think that it is the initiative from the guy that is saying, well, no matter what the system is I am going to cheat. I think the system drives that system into being the so-called thing. And that is why I have a problem with the whole thing.

Mr. STUDDS. We just had to make sure that the basic fault was not with the statute before Mr. Young and I rename it.

Mr. COSTAKES. No. It is not. I am just saying that if you put in rules and regulations that are thoroughly unacceptable to the in-

dustry, then you might as well forget it. That is where the difference is.

Mr. STUDDS. Got you. OK. Back for one last time to the, what do you call them here, technical experts. That is not what they were called in some of the testimony. But what sequence would you like to go in? Maybe I should rephrase it. Dr. Anthony, you have the next to the last word.

Dr. ANTHONY. While I do not disagree that there are data problems and that there are enforcement problems, and that there are all kinds of problems in lack of research, and lack of communication, I still would like to stress that we are missing the point. That, we can solve all those problems, and we still would not solve the problems of the extensive overfishing of our groundfish resources.

Fishing mortality is two to three times as great as it should be in order to maintain those resources, and indirect controls of them as now proposed and used in our plans simply will not work.

We need direct controls on the fishing mortality on these stocks or the stocks will continue to decline and the longer we wait, the longer it is going to take for those stocks to recover.

The other side of the coin is that there are many species that are underfished. And they are underfished because of the lack of markets. If we could get markets for these other underfished species and in the meantime control the—traditional species which are cod, haddock, yellowtail flounder, which continue to be heavily fished, perhaps, there is some hope for the future. Until we address the direct control of mortality, however, the situation is not going to get any better.

Mr. STUDDS. I appreciate that. Do you want to give the next word to the Council or the Coast Guard? OK. Mr. Borden.

Mr. BORDEN. I would like to comment on Dr. Anthony's comment, briefly, and then make a closing comment.

Mr. STUDDS. OK.

Mr. BORDEN. I think the record will show that the Councils did try, initially, at the recommendation of National Marine Fisheries Service to use direct effort controls in the form of a quota. As we have already heard, that has successfully been implemented on the west coast. But it was not successfully implemented on this coast.

I would also like to make the point that the Councils are very aggressively, as Jim Warren pointed out, looking at limited entry and effort control measures in all components of the fishery.

And just to conclude, two other points. One of the keys to the issue of prosecution is speedy prosecution. Anything that the Subcommittee can do to speed up the prosecution system will ultimately benefit the management of these resources.

The other point that I would make is on the issue of permits sanctions. I think that, clearly, there is a growing body of thought in the industry that permit sanctions are needed. The Act permits it now. But I think there is a reluctance on the part of the National Marine Fisheries Service to utilize it. I think that—

Mr. STUDDS. By that do you mean the revocation forever of a person's right to fish?

Mr. BORDEN. Right. Or temporary suspension. I think that congressional inquiry into that particular issue and examination of some of the impediments to the use of permit sanctions will signifi-

cantly improve the prospects for their effective implementation. Thank you.

Mr. STUDDS. Thank you, sir. And finally, we are going to give Commander Chappell a chance to promise that all those vessels are going to stay in the northwest Atlantic.

Ltcmdr. CHAPPELL. I cannot do that, Congressman. But I will try something almost as good. There has been much talk about the lack of enforcement resources. I would just like to put in a plug about making the regulations enforceable. We can pour all the money or all the effort down the rat hole we want to. But if it does not have a bottom to it, we cannot do a decent job of enforcement.

The New England Council has been working very hard to that end of plugging up some of the holes. And we have made some successes. I am very optimistic listening to the fishermen here say that we are having less people out there violating. I do not think it is ten percent. I think it is higher than that. But if we ever limit it to a set number of pirates, we can certainly enforce that.

Mr. STUDDS. You think it is much higher than that?

Ltcmdr. CHAPPELL. I do not think it is much higher than that. But it might be double that. And that is just a seat of the pants estimation.

Mr. STUDDS. OK. Let me just say once again how much I appreciate not only the effort of our colleagues but the people who have come from all kinds of places. Some of you could, in fact, one of you did fish. And I understand that.

The Subcommittee is going to continue the regional hearings. The next one is scheduled for Seattle and Kodiak. And I know there are some other suggestions for places where we could properly hold hearings and we will, probably, end up having more. Although, I know, at times, the process such as the congressional hearing process seems and is, in its own way, a tedious, long and repetitive one. Believe it or not, Members of Congress learn this way. That may strike you as an oxymoron, but they do, we do.

And once one has been around, as Mr. Young was saying earlier, to a number of areas of the country, to a number of coasts, to a number of ports, to a number of fishermen, Lucy you refer to the category of a fisherman who has something to say. I suggest that that is redundant. We will have to be deaf, dumb, blind and a number of other things, all of which have been attributed to us at one time or another, not to hear what is being said. We appreciate the effort of you all. The Subcommittee stands adjourned until its next meeting. The gentleman from New Jersey.

Mr. SAXTON. Mr. Chairman, I just would like to say that, as I said at the outset, field hearings are often very beneficial. And I have to say that this has been one of the most beneficial for me of almost any of the field hearings that I have attended, in terms of listening and understanding what your feelings are, and even in terms of seemingly drawing some consensus in terms of enforcement and penalties, and perhaps, even some consensus in regard to the subject of council membership. We are pleased that this panel, at least, seems to be unanimous in terms of not wanting any major changes, at least.

And also, the discussion that we heard today on limited entry, I feel, is very interesting. And even though there is no consensus, to

hear that discussion was very, very beneficial to me. So, Mr. Chairman, congratulations to you and your staff and the Ranking Member and his staff for putting this hearing together today. It has been, I believe, a very, very beneficial hearing.

Mr. STUDDS. Comments like that entitle the gentleman to a lunch of grilled threatened species.

The Subcommittee stands adjourned.

[Whereupon, at 1:58 p.m., the Subcommittee was adjourned.]

[The following was submitted for the record.]

101ST CONGRESS
1ST SESSION

H. R. 2061

To authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1992.

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 1989

Mr. STUDDS (for himself, Mr. JONES of North Carolina, Mr. YOUNG of Alaska, Mr. DAVIS, Mr. HUGHES, Mr. CAEPER, Ms. SCHNEIDER, Mr. PALLONE, Mr. BRENNAN, and Mrs. UNSOELD) introduced the following bill; which was referred to the Committee on Merchant Marines and Fisheries

A BILL

To authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1992.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 406 of the Magnuson Fishery Conservation and
4 Management Act (16 U.S.C. 1882) is amended—

5 (1) by striking paragraph (1) and all that follows
6 through paragraph (14);

7 (2) by redesignating paragraph (15) as paragraph
8 (1); and

9 (3) by adding at the end the following:

2

- 1 “(2) \$75,000,000 for fiscal year 1990.
- 2 “(3) \$76,000,000 for fiscal year 1991.
- 3 “(4) \$77,000,000 for fiscal year 1992.”.

○

TESTIMONY OF
JAMES W. BRENNAN
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

BEFORE THE
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

MAY 2, 1989

Mr. Chairman and Members of the Subcommittee:

My name is James W. Brennan and I am Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

I am pleased to have this opportunity to discuss the reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA). The Committee has H.R. 2061 under consideration, and the Administration will be submitting its legislative proposal recommending reauthorization of the Act shortly. H.R. 2061 would authorize the MFCMA at levels of \$75 million for FY 1990, \$76 million for FY 1991, and \$77 million for FY 1992. The Administration opposes enactment of this bill, as the funding levels exceed the President's FY 1990 budget level of \$55.93 million.

In the 13 years since the Act took effect, the Magnuson Act has succeeded in Americanizing our Nation's fishery resources. Through our joint efforts with the Regional Fishery Management Councils we have been able to create opportunities for the

American fishing industry to develop and grow. Thirty fishery management plans and 6 preliminary management plans developed by the Regional Fishery Management Councils, and implemented by NOAA Fisheries, have resulted in the growth of U.S. fisheries and the displacement of foreign fishing. From 1977 to 1988, domestic commercial landings nearly doubled to 5 million metric tons. Foreign fishing was reduced to 62 thousand metric tons in 1988 from a peak of 1.8 million tons in 1977.

Statistics such as these do not disclose the real dynamic activity and accomplishments in our fisheries. During the past 10 years we have witnessed the most rapid buildup of a fishing industry in modern times. When the Magnuson Act was implemented, most of the fisheries off our shores were conducted by foreign fishermen. Today many of our fleets are the most advanced in the world. While this is due in large part to industry which made the investment and developed the technology, it is also the result of Congressional action in enacting policies, that created opportunities for American fishermen; and of NOAA's and the Councils' vigorous implementation of those policies.

There has been a rapid increase in domestic catches under joint venture operations. Joint venture operations have given U.S. fishermen an opportunity to sell nearly 1.5 million metric tons of fish to foreign buyers in 1988 at a value of \$214 million. The experience gained in catching and delivering large quantities of fish to highly mechanized at-sea processors has set

the stage for the development of domestic processing capability, both on-shore and at-sea. In the Pacific Northwest and Alaska, for example, we estimate that the amount of fish processed by U.S. industry in 1989 will be more than ten times the amount processed by them in 1986, and will utilize virtually all of the available resources. Where U.S. factory trawlers accounted for about 8 percent of the U.S. processing in 1986, they are expected to account for 86 percent in 1989. We are increasingly finding the introduction of U.S. motherships, which only process fish, being served by U.S. harvesting vessels.

The development of the U.S. industry has also led to a dramatic rise in U.S. fisheries exports. In 1988, edible fish exports grew to a record \$2.2 billion from \$1.6 billion in 1987, and up from 1 billion only five years ago.

Although U.S. fishermen have accomplished a great deal in the last decade, the challenges presented by increasing Americanization of our fisheries are growing. Two of the most critical problems we must deal with are the prevention of over-fishing and the allocation of finite resources. Simply stated, there are too many domestic fishermen and too few fish. For example, New England groundfish, Gulf red drum, red snapper and king mackerel, some stocks of Pacific salmon, and Alaska crab are all in a seriously overfished condition and in need of being rebuilt. As previously noted, we have witnessed many successes in the Pacific Northwest and Alaska. Growth fisheries in these

areas must be controlled, lest we fall into the same over-capitalized, overfished situation we find in the fisheries just noted. The overfishing problem is further aggravated by the degradation of habitats that support the stocks. Also limited enforcement resources have hindered our ability to effectively implement management programs which would help resolve the overfishing problem.

One of the most difficult problems to be faced in the coming years will be the allocation decisions among competing U.S. domestic interests. We must now allocate limited resources among commercial, recreational, Native American and subsistence fishermen, or between joint-venture fishermen and those who deliver fish to domestic processors. Allocation decisions among these competing groups will require better resource and fishery data, as well as better documentation that the allocation decisions are equitable, legal, and in the national interest. They must be able to withstand judicial review in an increasing number of court cases.

Despite the greatly reduced foreign presence in our waters, illegal or adverse foreign fishing in the Pacific has become a serious problem with which we must deal. Recent instances in point have been the increased level of fishing in the "donut hole" off Alaska and the high seas salmon interception problems in the Pacific.

Solving these problems will require new ways to protect, conserve, manage, and develop our Nation's living marine resources. We must seek better ways to manage our fisheries cooperatively with the states and other interests by providing guidance and leadership in the conservation of the resources. At the same time, we must provide necessary flexibility for real-time management and efficient operations to achieve maximum benefits to the Nation. The Councils, for example, have been actively pursuing the implementation of limited access programs in many of the fisheries around the country. Such innovative approaches to management as this may well provide a solution to overcapitalization and overfishing, if they are supported by affected fishermen.

Although we are working to resolve these most difficult issues, Congress and NOAA need to assist the Councils in their effort. We have been seriously handicapped recently because many of our programs, particularly for data gathering, research, and enforcement, have been limited by a lack of stable funding. We must have a constant source of funding that will allow us to develop the necessary programs to deal with the issues. We have continued to work on identifying alternative funding mechanisms to reduce or offset Federal fisheries conservation and management costs. Two years ago, the administration proposed the establishment of marine fishing user fees dedicated to underwrite funding for important marine fisheries activities. Increased support for

this initiative that we have witnessed in the past few months demonstrates the growing recognition of the need to provide a stable source of revenue for Federal marine fisheries management programs. A significant opportunity exists to shift part of the burden of fisheries programs to those who directly benefit from them. If we can achieve this, we will be assured of adequate funds for a strong, effective fisheries program.

The Magnuson Act authorization for appropriations expires on September 30, 1989. The Administration recommends that the Act be reauthorized for fiscal year 1990 at a level of \$55,930,000, and for fiscal years 1991 and 1992 at such sums as may be necessary. It further recommends several amendments to the Act. The most important of these amendments I will address are: (1) domestic fee levels, (2) enforcement penalties, and (3) foreign permits, fees and data.

DOMESTIC FEE LEVELS

The amendment would allow the collection of domestic fees for purposes over and above the recovery of administrative costs incurred in issuing permits (the current permissible level). The need for and level of a proposed fee would be determined on a fishery-by-fishery basis under the requirements of the Magnuson Act and other applicable law. Those who benefit from use of our marine fish resources, including those allowed to participate in limited access fisheries, should pay for programs to manage and conserve those resources. The potential increase in fees would

help defray the cost of vital fisheries management programs. would also point out that the Regional Fishery Management Councils favor this provision.

ENFORCEMENT PENALTIES

The Act prohibits any person on a fishing vessel from interfering with our enforcement officers and imposes criminal sanctions for those actions, but it does not afford the same protection for observers. We believe any person impeding, intimidating, interfering or assaulting our observers should be prosecuted for a criminal offense. This is the minimum protection we can afford those individuals who are required to endure considerable hardship and risk of bodily harm in an effort to carry out their assigned duties.

We further propose to increase the limit on a civil penalty from \$25,000 to \$100,000. Increasing the maximum penalty to \$100,000 would provide NOAA with a more effective enforcement mechanism, particularly for more serious violations when other sanctions are unavailable or we choose not to impose them because of particular circumstances. Although a variety of sanctions, including forfeiture of fish and vessel or permit suspension are available in addition to the \$25,000 fine, these more strict sanctions sometimes cannot be applied. For example, an unpermitted foreign vessel may flee the EEZ before the Coast Guard can seize the vessel and its catch.

An issue that has impacted our cooperative relationships with the States and other Federal agencies is the reimbursement from proceeds of seized property, or from fines or penalties, for functions performed by those entities. The Department of Commerce, the Department of Transportation, and individual States are parties to cooperative enforcement agreements that authorize the States to enforce the Magnuson Act. Under these agreements, no reimbursement to the States is authorized except the loan of property acquired through purchase, forfeiture or surplus. Proceeds of seized property subject to judicial forfeiture are deposited into the Department of Justice Asset Forfeiture Fund, but it is not certain that the States can obtain reimbursement from that fund. Also, many seizures made under the Act are not subject to the Justice Department fund because they are handled administratively rather than through the judicial system. Accordingly, the Department of Commerce recommend a provision allowing for the reimbursement from the proceeds of seized property, or from fines and penalties, for functions performed by State agencies. We believe that this amendment would encourage increased participation on the part of States under cooperative enforcement agreements.

FOREIGN PERMITS, FEES AND DATA

Currently, the Fishery Management Councils are allowed up to 45 days to comment on foreign fishing applications. While this requirement appropriately applies to those vessels that are

catching, taking, or harvesting fish in U.S. waters, it applies equally to any merchant vessel that may support those vessels. We propose to exempt from the 45-day comment period those merchant vessels that are used to transfer, transport, and store fish taken from foreign vessels, or used to supply those vessels in the EEZ. This would eliminate an unnecessary burden on those support vessels that are contracted on an opportunistic basis and diverted to rendezvous with processing or harvesting vessels on an as-needed basis. Reducing the time for processing permits for these vessels would alleviate an unnecessary burden on Regional Councils and potentially make vessels available for transshipment on a timely schedule and make more capacity available for U.S. harvesting vessels that deliver to foreign at-sea processors.

We also propose that the fees charged foreign vessels in the EEZ be set at some reasonable figure rather than being based on the current complex statistical formula. In setting fees, the Secretary is now required to consider the cost of carrying out the provisions of the Act with respect to foreign fishing. With the drastic decline in foreign catches, fees based on the formula could be well in excess of management costs associated with the foreign effort or the ex-vessel values of the fish being targeted. Our proposal would provide necessary flexibility in setting realistic fees and would give the Secretary authority to increase fees as necessary at some future date. It would also

reduce a considerable burden on the Federal agencies who must maintain complex accounting systems largely to supply data for this purpose.

We propose to exclude data regarding joint ventures and foreign catch by country from the confidentiality requirements of the Act. Under Section 303(d) of the Act, the Secretary is required to protect confidential data submitted under a fishery management plan so that the submitter cannot be identified. This has resulted, on occasion, in the Councils members and the public being denied access to needed data for use in developing management measures. This amendment is particularly important for adequate documentation in plan development and approval, and could serve to mitigate contentious issues with foreign nations.

Mr. Chairman, as noted earlier, the Administration will be submitting proposed legislation to the Congress in the very near future. However, the Administration opposes H.R. 2061, as the funding levels exceed the President's FY 1990 budget request.

Thank you.

TESTIMONY OF

AMBASSADOR EDWARD E. WOLFE
DEPUTY ASSISTANT SECRETARY
BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS
DEPARTMENT OF STATE

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

MAY 2, 1989

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the reauthorization of the Magnuson Fisheries Conservation and Management Act (MPMCA). I would like to say at the outset that, from the perspective of the Department of State, the Act and its implementation have been a noteworthy success. The Department has no changes to recommend to the Act.

As the Subcommittee is aware, among the fundamental purposes of the Magnuson Act are to conserve and manage U.S. fisheries resources, to promote domestic commercial and recreational fishing under sound conservation and management principles, and to encourage the development by the U.S. fishing industry of fisheries off the coast of the United

States. The principal role of the Department of State in the process established by the Act to achieve these purposes has been to negotiate Governing International Fisheries Agreements (GIFAs) with foreign nations desiring to operate off the U.S. coast, and to allocate surplus American fisheries resources to fishermen from countries with which the U.S. has GIFAs in force.

The principal fisheries policy which the United States has pursued since 1980 has been called the "Americanization" of fisheries in the United States Exclusive Economic Zone (EEZ). Consistent with this policy, the Department of State and the Department of Commerce have followed the allocation criteria specified in section 201 of the Magnuson Act. During the decade of the Eighties, direct allocations to foreign countries have fallen from a high in 1980 of 2,176,789 metric tons (MT) on both coasts, to 51,577 MT (Atlantic mackerel and bycatch species) thus far in 1989. The policy has been responsible for, and at the same time has been driven by, dramatic changes in our fisheries. The growth in the U.S. catch of Alaska pollock and the development of the squid fisheries on the East coast are two examples which come to mind. As the foreign fisheries declined, joint ventures expanded during the early part of the same period. Joint ventures, usually involving U.S.

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fishermen selling their catch to foreign vessels in our zone, reached a peak in 1986, when 1.5 million metric tons were caught. "Americanization" is rapidly reducing joint venture fishing operations each year, which is the intent of the law.

To send the diplomatic signal to foreign countries fishing in the U.S. EEZ that the U.S. was changing its approach with regard to bilateral fisheries agreements, we began several years ago to extend certain agreements for only a two year period. We have not renegotiated a GIFA for several years. Our approach has been to offer each GIFA nation the choice of accepting a two-year extension of their existing agreement (with changes to make it conform with current U.S. law and policy), or to allow their agreements to expire. During the Eighties, the number of GIFAs in force has been reduced from 17 to 9, counting the comprehensive bilateral fisheries agreement with the Soviet Union. I might note at this point that we do not have a goal of eliminating all GIFAs, since in some cases GIFAs are a useful vehicle for arrangements, such as joint ventures which may benefit U.S. fishermen during this stage of development of the U.S. fishing industry.

From an international perspective, Mr. Chairman the problems which the MFCMA intended to address when it was written over a decade ago, for the most part have been resolved. That is, the U.S. is now fully controlling the fisheries resources off our coast. In fact, for all practical purposes, foreign fishing in the U.S. zone has been eliminated. One might say that, in a sense, a chapter in U.S. fisheries relations with countries which traditionally fished off the U.S. coast, has been closed.

We are now pursuing new and innovative methods of doing business with our foreign fishing partners. For example, we have been promoting the establishment of equity joint ventures between U.S. and foreign companies. Japan has participated in the development of several surimi processing plants in Alaska and other countries are currently involved in other equity investment projects.

As we have gone about the process of reducing, and in fact practically eliminating, the foreign fishing off the U.S. coast, we have inevitably encountered a reaction from the foreign governments involved. While U.S. fisheries policy and corresponding actions have not been popular with our foreign colleagues, all of the foreign nations involved have accepted the reality of coastal state control over the

management of coastal fisheries resources inside 200 miles, and its inevitable consequence. I might add, for the record that we have not experienced any serious foreign policy problems as a result of the phase out of foreign fishing in our zone.

Mr. Chairman, as one chapter of our international fisheries relations has come to a close, other international areas are requiring more of our attention. In some cases, these areas have long been the focus of considerable attention by the Department of State. We have important responsibilities in international fisheries matters other than the allocation of surplus resources to GIPA countries. Three broad areas of U.S. international fisheries interests come to mind.

The first area involves the question of how to deal with fishery stocks which are partly in the U.S. zone and partly in either the zones of neighboring countries or in the high seas areas beyond the 200 mile jurisdiction of any nation. For example, one of the main issues we face in the North Pacific is the dramatically increased level of fishing by third countries in the Bering Sea beyond 200 miles, the so-called "donut" area. In this region, fishing vessels from Japan, Korea, Poland, and China have concentrated their

efforts and increased harvests of pollock from some 100,000 metric tons (MT) in 1984 to about 1.3 million MT in 1988. This is totally unacceptable. According to our scientists this dramatic increase in fishing is adversely affecting economically vital U.S. pollock stocks as well as other stocks in the Bering Sea. We are currently working with the Soviet Union, the other Bering Sea coastal state, to develop measures for addressing the unregulated fisheries in the "donut" area. In these talks, the United States has proposed calling for a temporary moratorium on fishing in the "donut" by all countries, including the U.S., until an adequate multilateral conservation regime for the region can be established.

Talks with the Soviet Union on mutual fisheries concerns will resume in Moscow in late May or early June. In addition to the Bering Sea "donut" issue, the two sides will discuss measures to conserve salmon on the high seas. Under a Memorandum of Understanding signed on February 9, both countries have agreed to the principle that high seas salmon fishing is a wasteful practice and should be eliminated. We also agreed to increase bilateral cooperation on high seas salmon enforcement issues. During the next meeting in Moscow we will be discussing possible long-term regimes for the conservation of salmon throughout the North Pacific.

We also face a major conservation problem in the form of the large squid and tuna driftnet fleets from Japan, Korea, and Taiwan operating throughout the North Pacific. These fleets utilize daily some 30,000 to 40,000 miles of floating driftnet, which entangle those marine resources migrating through the fishing grounds. This type of wasteful and indiscriminate fishery takes large quantities of marine mammals, seabirds, and other non-target living marine resources. In addition, if the fisheries operate in certain northern areas, they will intercept valuable U.S.-origin salmon. There is, in fact, evidence that squid driftnet vessels from Taiwan, and possibly other countries, are involved in illegal directed salmon fishing. For instance, the U.S. Coast Guard recently sighted several Taiwan squid driftnet vessels operating in an area that is closed to them. This incident has added to our concern with the activities of the driftnet fleets in the North Pacific.

Pursuant to the 1987 Driftnet Act, we have been involved in talks with Japan, Korea, and Taiwan with the aim of reaching adequate agreements for the monitoring and enforcement of these driftnet fleets. Although we continue to actively press for such agreements, progress has been slow in some instance and practically nonexistent in others. We have faced resistance on the grounds that

fisheries on the high seas should be controlled only by the flag state. If adequate agreements are not reached by June 29, the Driftnet Act requires that the Secretary of Commerce certify such fact to the President under the Pelly Amendment. The President then has the discretion to place sanctions on imports of fisheries and aquatic products from the countries involved.

On a more positive note, turning to the matter of neighboring countries, one approach to bilateral fisheries relations is the recently concluded comprehensive bilateral fisheries agreement with the Soviet Union, which covers all aspects of our bilateral fisheries relationship. The agreement provides for access to each other's waters on a reciprocal basis and for cooperation on fisheries issues of mutual interest. The agreement also lays the groundwork for increased cooperation on bilateral fisheries science and research issues.

This landmark agreement, which was the product of eight years of talks, provides U.S. fishermen for the first time access to the Soviet 200 mile zone. Because of ongoing economic restructuring efforts in the USSR, our Embassy in Moscow informs us that there is strong Soviet interest in establishing joint enterprises with foreign companies, especially in the field of fisheries. Several U.S. companies are now in the process of finalizing joint

enterprises with their Soviet counterparts which will provide for joint harvesting, processing, and marketing of fish from Soviet waters.

The Soviet agreement also provides for increased bilateral cooperation on fisheries issues of mutual concern. As noted previously, one of the major issues both countries have been considering is the effect of the vastly increased fishing levels in the Bering Sea "donut" on adjacent fish stocks in the U.S. and Soviet EEZs. We have also been working jointly to address the conservation of salmon in the high seas areas of the North Pacific. I believe we are making progress in this area.

The idea of reciprocal fishing arrangements may not be appropriate in other cases involving U.S. fisheries relations with neighboring countries. In the case of the US/Canada fisheries relationship, for example, such an approach would likely be very controversial. On the U.S. side, there is no domestic consensus that the U.S. and Canada should have a more formal fisheries relationship involving reciprocal fishing rights or joint management efforts. Mr. Chairman, as we know from past experience, unless such a domestic consensus exists, it is futile for the government to proceed. At the same time, we recognize

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the need for close cooperation with Canada on fisheries matters, since in some instances both countries are managing the same stocks of fish, and historically our overall fisheries trade and industry relationship has been a very close one.

Our approach has been to enhance US/Canada communications on fisheries matters and to find as much common ground as possible on fisheries issues of mutual interest. At a minimum, we need to ensure that the different approaches to fisheries management used in the Canadian and U.S. systems do not conflict and thus counteract each other.

There are examples of cooperation between U.S. and Canadian fishing interests in some sectors. Canadian authorities in Nova Scotia have put in place minimum size restrictions which parallel our own. In the area of enforcement, U.S. and Canadian authorities have taken steps to increase cooperation and reduce conflicts along the US/Canadian maritime boundary. Also, we are in the process of attempting to arrange with Canada a jointly sponsored conference on the scientific basis for fisheries management, which we believe could be an important step in fostering better mutual understanding of each nation's management system. The U.S. approach to our fisheries

relationship with Canada has been to proceed cautiously and to pursue, on a step-by-step basis, somewhat limited and hopefully achievable goals, consulting with Congress and U.S. fishing interests as we proceed. In recognition of the long term fisheries relationship which we will inevitably have with Canada, it is our view that we should keep the door open for closer cooperation on fisheries management issues in the future. In an effort to enhance such cooperation, we have proposed that the two governments meet in the near future to exchange views on a variety of fisheries matters.

The U.S. also has an important fisheries relationship with Mexico which will require more of our attention in the years ahead. Leaving aside for the moment the question of tuna, which is probably the most important aspect of our fisheries relationship with Mexico, we do have important fisheries interests in both the Gulf of Mexico and off the Pacific coast which require cooperative efforts on the part of both countries. For example, in the Gulf there are stocks of fish such as mackerel which, in effect, are shared stocks migrating throughout the 200 mile zones of both Mexico and the U.S. On the Pacific side, the same situation pertains to such fish stocks as northern anchovy and coastal migratory species which move along the coasts of both

California and Baja, California. In the long run, the U.S. and Mexico need to work closely together in order to most effectively manage these shared stocks of fish. I recently had a very productive meeting with the new Mexican Secretary of Fisheries and other Mexican officials, and we plan to have a second meeting later this month.

A second broad international fisheries area which is the responsibility of the Department of State involves the conservation and management of anadromous U.S. fisheries resources beyond the U.S. 200 mile zone. Such conservation and management is, in my opinion, one of the more important purposes of the MFCMA. Our conservation efforts are complicated by the fact that foreign fleets may take U.S. origin salmon beyond the U.S. exclusive economic zone. It seems clear that a cooperative international effort is mandatory if we are to do effectively the job required of us under the MFCMA. As I noted earlier, the driftnet negotiations with Japan, Korea, and Taiwan represent one of our major efforts to address salmon management issues. However, I would be less than candid if I reported to the Committee that all of the involved countries have been cooperative.

In recent years we have also been involved in other international action to conserve U.S. origin salmon on the

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high seas. In the early 1980s, the Department, through the International North Pacific Fisheries Commission (INPFC), raised the issue of excessive salmon harvesting by the Japanese salmon fleet. As a result, the Japanese imposed new area restrictions on their fleet in 1982 in order to reduce the interception of North American salmon. In 1986, the Department negotiated an amendment to the INPFC whereby Japan would cease fishing for salmon in the high seas area of the Bering Sea by 1994.

As noted earlier, the Department is also currently seeking new ways to cooperate with the Soviet Union towards better conservation of salmon in the North Pacific. Towards this end, we signed a Memorandum of Understanding in March of this year at the Soviet Embassy which provides for increased sharing of information and cooperative enforcement against high seas salmon poaching. This was the first US/Soviet agreement signed during the Bush Administration. The Department is continuing to explore every avenue, consistent with international law, to conserve U.S. salmon on the high seas.

I might make the observation at this point, Mr. Chairman, that it was considerably easier to deal with these management issues beyond our zone when there were U.S. fisheries resources to allocate to the foreign nations with

whom we have to negotiate. A few years ago, when there were surplus U.S. fisheries available for allocation to foreign nations, we had considerable leverage with which to help us achieve our goals. Now that we do not have, and are not likely to have any surplus U.S. fish to use as a negotiating "carrot", it is more difficult for us to persuade foreign governments to reduce their fishing or undertake other economically disadvantageous actions with regard to their fisheries beyond 200 miles. As I am sure the Chairman recalls, the U.S. "Fish and Chips" policy was an important tool in achieving our goal of full utilization and development of U.S. resources by U.S. fishermen in our EEZ. It is unclear whether under these circumstances the U.S. will be able to achieve all that it wants, but we are determined to do our best with the situation facing us.

A third broad area of international fisheries which is the responsibility of the Department of State involves the so-called distant water fisheries which are conducted by U.S. flag vessels. To a considerable extent, these activities are not really a part of the MFCMA process, although one of the MFCMA purposes is to support and encourage international fisheries agreements for the conservation and management of highly migratory species. While the U.S. has other distant water fisheries interests, tuna is the most important distant water fishery which we

have. The U.S. tuna industry continues to be one of the major U.S. fisheries and, indeed, it is one of the world's major tuna industries. The Department has expended considerable effort around the world in attempting to negotiate both conservation and access arrangements involving U.S. tuna vessels. One of our more notable recent successes was the negotiation and entry into force of the South Pacific Regional Fisheries Agreement, which provides access for the U.S. tuna fleet, for five years, to a ten million square mile area of the western Pacific Ocean. Sixteen Pacific Island countries are parties to this treaty.

In the eastern Pacific, we have been encouraged by recent developments which offer new hope for the negotiation of a comprehensive tuna management organization for the eastern tropical Pacific. The Inter-American Tropical Tuna Commission continues to do an outstanding job in monitoring the status of the tuna and porpoise stocks of the eastern tropical Pacific Ocean. In the Atlantic, we believe that the International Commission for the Conservation of Atlantic Tunas has been very effective in

providing a mechanism for effective conservation and management of Atlantic tuna and billfish species.

In closing, Mr. Chairman, let me reiterate that the Department of State believes, in terms of international fisheries matters as they relate to the MFCMA, that we have successfully achieved the intent of the Act and the "Americanization" of the U.S. zone. A chapter has been closed. The new chapter is evolving which will require international cooperation, albeit differently, to continue to advance U.S. fisheries interests.

Thank you Mr. Chairman. I will be pleased to answer any questions you and other members of the Subcommittee may have.

U.S. Department
of Transportation
United States
Coast Guard



Commandant
United States Coast Guard

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DEPARTMENT OF TRANSPORTATION

U. S. COAST GUARD

STATEMENT OF REAR ADMIRAL WALTER T. LELAND

ON REAUTHORIZATION OF THE MAGNUSON ACT

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION

COMMITTEE ON MERCHANT MARINE AND FISHERIES

2 MAY 1989

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
STATEMENT OF REAR ADMIRAL WALTER T. LELAND
HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON
FISHERIES AND WILDLIFE CONSERVATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
2 MAY 1989

GOOD MORNING MR. CHAIRMAN. I AM PLEASED TO MEET WITH YOU AND THE OTHER DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE TO DISCUSS THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT (MAGNUSON ACT).

IN 1977 THE COAST GUARD BEGAN ENFORCING THE NEWLY ENACTED MAGNUSON ACT. WHAT BEGAN AS A SHOE-STRING OPERATION USING BUOY TENDERS AND AGING CUTTERS HAS DEVELOPED INTO A SOPHISTICATED, HIGHLY TECHNICAL ENFORCEMENT OPERATION--AN EFFORT TO WHICH WE DEVOTE SOME OF OUR MOST MODERN SHIPS AND PLANES.

PRIOR TO THE MAGNUSON ACT, FROM OUR BEACHES WE COULD SEE HUNDREDS OF FOREIGN FISHING VESSELS. THE FUTURE OF OUR NATION'S FISHING INDUSTRY WAS THREATENED BY GROSS OVER FISHING AND DEPLETION OF FISHERY STOCKS. SINCE PASSAGE OF THE ACT, WE HAVE BEEN VERY SUCCESSFUL IN CONTROLLING FOREIGN ACCESS TO OUR FISHERY RESOURCES. BUT THE FUNDAMENTAL NEED FOR THE MAGNUSON ACT, TO ENSURE THE NATION'S FISHERIES ARE PROPERLY CONSERVED, IS STILL OF VITAL IMPORTANCE.

THANKS TO THE MAGNUSON ACT, WE HAVE SEEN A SIGNIFICANT INCREASE IN INITIATIVES TO MANAGE AND CONSERVE OUR FISHERIES RESOURCES. WE NOW ENFORCE 30 FISHERIES MANAGEMENT PLANS AND SIX PRELIMINARY MANAGEMENT PLANS. MOST CONTAIN EXTENSIVE REGULATIONS CONCERNING GEAR SPECIFICATIONS, LIMITS ON FISH SIZE, CATCH SEASONS, AND ENFORCEMENT PROCEDURES. WE HAVE ALSO SEEN HOW TECHNOLOGICAL ADVANCEMENTS CAN IMPROVE FISHERY HARVESTS.

WORKING THEIR GEAR. THIS OPERATIONAL CAPABILITY, PROVIDED OVER VAST GEOGRAPHIC AREAS, IS NECESSARY BEFORE THE SPECIFICS OF THE REGULATIONS CAN BE ENFORCED.

WHEN THE COAST GUARD INITIALLY BEGAN ENFORCING FISHERIES REGULATIONS, WE WERE DEPENDENT ON NATIONAL MARINE FISHERIES SERVICE (NMFS) AGENTS FOR TRAINING AND EXPERTISE. WE HAVE SINCE DEVELOPED A BASE OF FISHERIES SPECIFIC EXPERTISE AND AN EXTENSIVE BACKGROUND IN FISHERIES LAW ENFORCEMENT THAT HAS GREATLY IMPROVED OUR CAPABILITY AND EFFECTIVENESS. MUCH OF THE EXPERTISE THAT WE DEVELOPED DURING YEARS ON THE FISHING GROUNDS, SUCH AS DETECTION AND BOARDING TECHNIQUES, HAS BEEN DIRECTLY TRANSFERABLE TO HELP FIGHT THE "WAR ON DRUGS."

HOWEVER, EVEN THOUGH DRUG INTERDICTION HAS BEEN MORE VISIBLE IN THE NATIONAL FOCUS, WE HAVE NOT LOST SIGHT OF THE IMPORTANCE OF OUR MISSION UNDER THE MAGNUSON ACT. INDEED, WE CONTINUE TO VIGOROUSLY SUPPORT THE PROVISIONS OF THIS ACT. ALTHOUGH SIGNIFICANT COAST GUARD RESOURCES HAVE BEEN DEVOTED TO DRUG INTERDICTION, WE HAVE BEEN CAREFUL TO RETAIN A STRONG CAPABILITY IN FISHERIES ENFORCEMENT. AND NOW, EVEN AS NEW DRUG INTERDICTION ASSETS ARE COMING ON LINE, WE EXPECT TO INCREASE FISHERIES ENFORCEMENT EFFORTS AS WELL. OF COURSE, THIS ASSUMES THAT THE PRESIDENT'S BUDGET REQUESTS WILL BE FULLY FUNDED.

IN ADDITION TO OUR ROLE AS THE LEAD AT-SEA FISHERIES ENFORCEMENT AGENCY, WE HAVE BEEN VERY ACTIVE IN SUGGESTING IMPROVEMENTS TO FISHERIES MANAGEMENT PLANS. WE ARE OUT THERE WITH THE FISHERMAN. OUR INPUT HELPED ELIMINATE LOOPHOLES THAT ALLOWED ABUSES OF THE NORTHWEST ATLANTIC EXEMPTED FISHERIES

PROGRAM. OUR BOARDING REPORTS ARE OFTEN THE VITAL SOURCE OF INFORMATION THAT SHOWS CATCH TRENDS, AND NEW FISHING TECHNIQUES.

WHILE I HAVE TOLD YOU THAT WE BELIEVE THE MAGNUSON ACT CONTINUES TO BE THE CORNERSTONE OF THE FISHERIES CONSERVATION EFFORT, AND THAT WE WANT TO EXPAND OUR FISHERIES ENFORCEMENT EFFORT, LET ME ALSO SAY THAT WE SHOULD CONTINUE TO TRY TO IMPROVE THE ENFORCEMENT PROVISIONS IN SOME OF OUR FISHERIES MANAGEMENT PLANS.

THE FISHING INDUSTRY IS WELL REPRESENTED ON REGIONAL FISHERY COUNCILS. IN THE RULEMAKING PROCESS, WHEN WE AGREE THAT A PARTICULAR MEASURE IS NEEDED FOR FISHERY CONSERVATION, WE MUST CONTINUE TO TRY TO ENSURE THAT THOSE PROVISIONS ARE ENFORCEABLE. WE WANT TO ENSURE THAT THE EXISTING REGULATIONS EVOLVE SO WE CAN ADHERE TO THE PROPOSED SPIRIT OF THE CONSERVATION MEASURES.

MR. CHAIRMAN, I THINK YOU'LL AGREE THAT MOST FISHERMAN SUPPORT THESE MEASURES DESIGNED TO PROTECT THE FUTURE OF THEIR LIVELIHOOD.

I WILL BE PLEASED TO ANSWER YOUR QUESTIONS.

TESTIMONY OF ELAINE W. KNIGHT, CHAIRMAN
SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

On behalf of the Council Chairmen I thank you Chairman Studds and members of the Committee for inviting us to appear before you to present testimony on issues relevant to the amendment and reauthorization of the Magnuson Act. I am Elaine Knight, Chairman of the South Atlantic Fishery Management Council, and I will give a brief introduction to the testimony the Council Chairmen will present to you today. As Chairman Studds had requested, we have coordinated our testimony so that it will be concise and to the point in addressing the issues.

Over the past two years, the Council Chairmen have met and interacted on a more frequent basis. This increased interaction initially resulted from the need to collectively react to the then developing Secretary's Regulations and Guidelines that affect all aspects of Council operation. Most recently, this forum has served as a deliberative process in developing the recommendations that will be presented today. There has been a significant amount of effort from all concerned in developing these recommendations, and as you might well imagine, all the Chairmen do not agree on all the issues. Also, though we as Chairmen have acted with the advice and knowledge of our respective Councils, the testimony we are presenting today is that of the Council Chairmen.

There are fourteen amendments to the MFCMA that we are recommending. All are made with the sincere intent to improve the Act by the Chairmen supporting them. They range from minor technical amendments that should not upset anyone to the inclusion of tuna, which we all know has and will continue to ignite emotions and controversy. Attached to my testimony is a list of the amendments being proposed. The other Council Chairmen will address these amendments in their testimony, as well as issues that are important to each of their regions. There will also be testimony presented on recommended Council funding levels and additional funding needs relative to the NOAA Fisheries budget. The major issues and concerns specific to my Council are the same as those you will hear expressed in the other Councils' testimony, particularly the Gulf Council.

TESTIMONY OF ELAINE W. KNIGHT

Chairman Studds, on behalf of the Council Chairmen I am requesting that our testimony presented here today be entered into the hearing record. Also, if you or the Committee requires any further information please let us know and we will be happy to provide it for you.

Again, thank you.

AMENDMENTS TO THE MFCMA RECOMMENDED BY THE FISHERY MANAGEMENT COUNCIL CHAIRMEN

1.

SECTION TO BE AMENDED: SEC. 2. FINDINGS, PURPOSES AND POLICY

RECOMMENDATION: Amend Act to add a number (7) under Section 2 (b) PURPOSES.

SUGGESTED LANGUAGE: (7) To eliminate the interception of United States anadromous salmon and steelhead species in waters beyond the Exclusive Economic Zone in order to effectively protect and enhance the conservation needs of and social and economic benefits derived from United States origin salmon and steelhead.

RATIONALE: Recent reports of the extent of essentially unregulated high seas drift gillnetting for squid in the North Pacific by foreign nations have created extreme concern over the catches of North American origin salmon and steelhead, as well as marine mammals, birds and other non-target species. It is estimated that in excess of 20,000 miles of gillnet are set each day by 700-1,000 vessels primarily from Taiwan, Japan and South Korea. The vessels are fishing in waters known to contain U.S. anadromous fish, and the potential for large impacts is great. These gillnets if lost, continue to ghost fish and can also foul props and be a hazard to navigation. U.S. efforts to obtain information on this fishery and to control it have not been successful.

This new subsection as proposed would strengthen our ability to eliminate the interception of U.S. anadromous salmon and steelhead in waters beyond the U.S. EEZ. Interception of salmon on the high seas has a very significant adverse impact on the resource users and potentially the resource itself. This issue is considered of such importance, that to focus attention on the issue, it should be included in the Purposes Section of the Act. This language is needed in the Act so the Councils involved can request more aggressive action in solving the associated problems.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

2.

SECTION TO BE AMENDED: SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES

RECOMMENDATION: Amend (or delete) Section 102 to the effect that tuna are no longer an exempted species.

SUGGESTED LANGUAGE: Change language as appropriate throughout the Act.

RATIONALE: A Council position paper will be presented at the Subcommittee hearing that will specifically address this issue.

COUNCIL CHAIRMEN'S POSITIONS: MAFMC, SAFMC, GMFMC, NEFMC and WPFMC Chairmen support the Amendment.

PFMC and CFMC Chairmen oppose the Amendment.

NPFMC Chairman remains neutral on Amendment.

3.

SECTION TO BE AMENDED: SEC. 201. FOREIGN FISHING

RECOMMENDATION: Section 201 be amended to delete language on the alternate method of establishing TALFF and the Act be amended to ensure that establishment and release of TALFF provide benefits to the U.S. fishing industry and the nation.

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: Section 201(d) was earlier amended to create what has now become a complicated process (Annual Fishing Level) for decreasing the Total Allowable Level of Foreign Fishing (TALFF) for a particular species. It was an early attempt to get around the interpretation of the arithmetic in the original MFCMA (TALFF = OY - DAH) coupled with fishery management plans (FMP) that required amendments to set annual quotas. To the best of our knowledge, the provision was used only once, for butterflyfish.

The current generation of FMPs make the Annual Fishing Level provision of 201(d) unnecessary. Given the current MFCMA and the concept of framework FMPs, there is greater flexibility in specifying the various quantities (Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Joint Venture Processing, and TALFF). The concept of Allowable or Acceptable Biological Catch (ABC) has also been introduced. Additionally, establishing the specifications annually is generally a matter of a proposed rulemaking or a notice action.

In light of the above evolutionary measures, portions of Section 201 are no longer needed.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

4.

SECTION TO BE AMENDED: SEC. 204. PERMITS FOR FOREIGN FISHING

RECOMMENDATION: Congress should review Section 204(b)(10)(B) for purposes of revising the formula by which foreign fishing fees are calculated to eliminate the inclusion of the amounts of fish harvested in the territorial sea, shellfish and the recreational fishery from the formula; and to further review Section 204(b)(10)(F) to reconsider the purpose for which foreign fees are escrowed.

It is further recommended that in view of the fact that the NOAA Fisheries budget is subjected to continued statutory reductions, all fishing fees collected be dedicated to the purpose of supporting the responsibilities of the NOAA Fisheries in their support of the MFCMA including research, data gathering and enforcement.

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: Current formula includes recreational catch and shellfish catch; hence lacks equity. Excluding territorial sea, recreational and shell fisheries will increase base revenue by about 30%. This would raise the fees to foreign nations to more closely approximate the actual cost of having them fish in our EEZ. The fees collected could be made available to provide funding for NOAA Fisheries to fulfill their legislated fisheries mandates.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen except the PFMC support this Amendment. The PFMC Chairman opposes the Amendment.

5.

SECTION TO BE AMENDED: SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

RECOMMENDATION: Amend Section 302 (a)(1) through (6) and (8) to specify an obligatory Council seat from each State.

SUGGESTED LANGUAGE: (Current language in regular type and new language in bold type and underlined, words bracketed are deleted)

.....by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed to an obligatory seat for [from] each state from a list of three or more individuals submitted by that state for that seat).

RATIONALE: NMFS has revised 50 CFR 601 providing that the obligatory seat would be filled from nominees submitted by the Governor of that state for the obligatory seat and for all at-large seats. While this is a better alternative than originally proposed in the draft regulations it does not satisfactorily resolve the issue. The Governors should continue to retain the flexibility of nominating certain individuals for certain seats. The NMFS regulations would change the present system and take this flexibility away from the Governors.

The amendment language is proposed to apply to all Councils except NPFMC which already has five obligatory Alaskan seats and two obligatory Washington seats. The current language of these sections applies the appointing procedures of section (b)(2) which provide for lists submitted by the Governors, qualifications, etc. The intent of the proposed language is to retain the obligatory seat for which only the Governor of that state may submit nominees. The legislative record supports an obligatory seat since the Senate version of the MFCMA made all appointed seats obligatory (i.e., three for each state including the fishery director). This amendment will assure the current appointment process, that has been working well and has been equitable for all states, will continue.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

6.

SECTION TO BE AMENDED: SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

RECOMMENDATION: Amend Section 302 to make Council staff members eligible to be reimbursed for actual expenses relative to their functions in support of Council activities.

SUGGESTED LANGUAGE: Amend Section 302 (d) **COMPENSATION AND EXPENSES** as follows: In the last line after the words "...nonvoting members" insert and Council staff members.

or

Amend Section 302 (f)(7)(D) **STAFF AND ADMINISTRATION** as follows: In the last line after the words "...under subsection (g)" insert and Council staff members.

RATIONALE: In carrying out their duties and responsibilities in support of the Council activities, staff members are required to use the same modes of transportation, stay in the same facilities and generally incur the same travel related expenses as Council members.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

7.

SECTION TO BE AMENDED: SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

RECOMMENDATION: Amend Section 302 (j) PROCEDURAL MATTERS so that fishery management plans and amendments are no longer subject to the National Environmental Policy Act.

SUGGESTED LANGUAGE: Add a new subsection under the first part of 302 (j) as follows: The National Environmental Policy Act (42 U.S.C. 4321-4361) shall not apply to the Councils, and fishery management plans and amendments to such plans shall not be subject to a requirement for preparation of an Environmental Impact Statement.

RATIONALE: The National Environmental Policy Act (NEPA) was passed to insure that the impacts of activities which may be harmful to the environment are adequately addressed. A fishery management activity, by its very nature, is aimed at conserving living marine resources for the long-term benefit of the nation. Fishery management activities are just the opposite of developmental activities which may produce adverse environmental consequences and for which the NEPA is relative.

The most recent amendments to the MFCMA have strengthened the requirements for addressing environmental issues and concerns in the development of fishery management plans and amendments. The requirements for preparation of Environmental Impact Statements (EIS) under the NEPA are duplicative and not necessary under the MFCMA. Each MFCMA plan or amendment now prepared is in itself very similar to an EIS. Removing this requirement will lessen procedural hurdles that slow the plan and amendment process.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen except the GMFMC and the CFMC Chairmen support this Amendment. The GMFMC and CFMC Chairmen oppose this Amendment.

8.

SECTION TO BE AMENDED: SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

RECOMMENDATION: Amend Section 302 (j) PROCEDURAL MATTERS to provide that vessel log books and processor/dealer reports required by fishery management plans and amendments be exempted from the Paperwork Reduction Act.

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: The Paperwork Reduction Act (PRA) includes a mandatory percentage decrease in paperwork requirements across the government. This decrease coupled with continued reductions in NOAA's budget and manpower is adversely affecting the quality of fishery management plans and the ability of the Councils to properly manage our fishery resources. The MFCMA is presently a data poor management process and if the Councils are to keep faith with the public by allowing participation as required under the MFCMA, the ability to collect the best information to perform the required analysis must be improved. In many instances, the Councils and the management system are criticized by the fishing industry because of the inability to collect data the industry has available and would willingly provide. Amending this Section to provide that vessel logbooks and processor/dealer reports required by an FMP be exempted from the PRA is one of the least expensive forms of data collection.

COUNCIL CHAIRMEN'S POSITIONS: All Chairmen support the concept of this Amendment.

9.

SECTION TO BE AMENDED: SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

RECOMMENDATION: Add language to clarify Council requirements relative to closed meetings and announcement of such meetings via newspapers.

SUGGESTED LANGUAGE: Delete portion of subsection 302 (j)(3)(A)(ii) beginning with the words "and if any meeting..." and add a new subsection (j)(3)(B) as follows: If any meeting or portion is closed, the Council concerned shall inform local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting. Brief closures of meetings in order to discuss employment matters or other internal administrative matters need not be published. Subparagraphs (D) and (F) of Section 302 (i)(2) shall not apply to any meeting or portion thereof that is closed pursuant to subparagraph (3)(A)(i) and (ii) above.

RATIONALE: This will allow Councils to close meetings on an ad hoc basis if unforeseen administrative or personnel matters arise that may require closure of a meeting to protect individual rights to privacy. This would only apply to meetings that do not bear in any way on Council operations.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

10.

SECTION TO BE AMENDED: SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

RECOMMENDATION: Amend Section 303 (e) DATA COLLECTION PROGRAMS to allow for the collection of the same data mandated in Section 303 (a).

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: The confidentiality of statistics Section 303 (d) was amended in 1986 to provide Council staff access to needed data. However, Section 303 (e) was not amended at that time to provide for the collection of confidential data under a 303 (e) request. We believe the retention of the present Section 303 (e)(2) language during the 1986 amendments to be an oversight. Currently, the requirements in Section 303 (a)(5) cannot be met because of restrictions imposed under Section 303 (e). To comply with this Section 303 (a), Section 303 (e) must be amended.

COUNCIL CHAIRMEN'S POSITIONS: The NEFMC, MAFMC, SAFMC and GMFMC Chairmen support the concept of this Amendment.

11.

SECTION TO BE AMENDED: SEC. 304. ACTION BY THE SECRETARY

RECOMMENDATION: Specify a timeframe for Secretarial action after Council submission of regulatory amendments.

SUGGESTED LANGUAGE: Reletter the present paragraphs (c) through (f) to (d) through (g) and add a new paragraph (c) as follows: (c) REGULATORY AMENDMENTS. A regulatory amendment approved by a Council pursuant to the provisions of a

fishery management plan shall be processed by the Secretary in accordance with Sections 304(a) and (b) unless the Secretary determines such regulatory amendment can be processed more quickly.

RATIONALE: Regulatory amendments were intended to be a mechanism whereby certain modifications to an FMP could be processed through the system and implemented faster than regular FMP amendments, but this mechanism has not worked in many instances. Regulatory amendments have no mandatory schedule for review and approval and are not always processed expeditiously. One Gulf Council regulatory amendment required almost three years for implementation. Other Councils have experienced the same delays with regulatory amendments. NOAA Fisheries has encouraged the Councils to include framework measures within their FMPs to allow for modifying plans without having to amend the FMP. Many such framework measures are implemented by regulatory amendment. Unfortunately, because there is no mandatory time-frame for review and approval, the amendments are relegated to a secondary status and are not processed expeditiously, thereby creating significant management problems. The delay generally occurs at review levels above NOAA Fisheries. The inclusion of regulatory amendments in Section 304 would in no way prevent them from being processed and approved more rapidly than FMPs, however it does insure they will be processed in a timely manner.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

12.

SECTION TO BE AMENDED: SEC. 304. ACTION BY THE SECRETARY

RECOMMENDATION: Amend Section 304 (d) by removing the limitation that fees not exceed administrative costs, and make appropriate amendments to Section 303 concerning the discretionary provisions of FMPs to allow the Councils to establish fees for the implementation and maintenance of observer and data gathering programs and limited access systems.

Establishment of fees should be accomplished on a regional basis through plan/amendment development and the funds collected should be dedicated to the purpose for which they were collected.

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: Currently, Section 304 (d) limits any fees charged U.S. fishermen to the administrative costs of issuing permits or licenses. As fisheries management under MFCMA has progressed and evolved over time, the need has arisen for a mechanism to fund data collection and observer programs and limited access systems. Many FMPs are being amended to incorporate these programs and systems with the end result of creating more cost effective management and profitable fishing operations. The cost of implementing these programs and systems cannot be met under the current language in the Act. Allowing the Councils, in consultation with the Regional Director, to have discretionary authority to charge some type of user fee as part of a management plan would enhance the MFCMA management process and better serve the needs of the resource and resource users.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen except the NEFMC Chairman support this Amendment. The NEFMC Chairman opposes this Amendment because it is considered too narrow in scope. The NEFMC has approved a position, which incorporates and goes further than the above Amendment, in that fees could be charged to cover any management cost under the Act.

13.

SECTION TO BE AMENDED: Where appropriate.

RECOMMENDATION: Amend the Act to require that upon written request by a Council the Secretary provide within thirty days a written legal opinion as to whether a measure or regulation under discussion or consideration by the Council is consistent with the Act and other applicable law and regulations.

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: In the past, the Councils have experienced difficulties getting definitive legal opinions from NOAA General Counsel relative to management measures or regulations under consideration. In some instances, NOAA General Counsel has refused to provide specific legal opinions to the Councils when requested. In other cases legal opinions provided at the regional level early in the FMP or amendment process have been reversed at the Washington level during the review process. This has led to a waste of time and effort on the part of the Councils and frustrated their management efforts.

Although this particular issue had not been a problem recently because of the practices which the current administration is following relative to giving the Councils legal advice, this amendment is proposed based on past problems and the potential for personnel changes in the administration that would recreate the same situation in the future.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

14.

SECTION TO BE AMENDED: Where appropriate.

RECOMMENDATION: That Congress consider appropriate language that will further strengthen the Act in regards to habitat.

SUGGESTED LANGUAGE: None specified. Changes should be made as appropriate.

RATIONALE: Habitat degradation, coastal pollution and ecosystem health have been and continue to be significant problems effecting marine fishery resources under MFCMA management. Past and present habitat degradation has played a significant role, along with fishing pressure and inadequate fishery conservation and management practices, in contributing to substantially reduced and overfished stocks of fish. The health of coastal and ocean habitats will be a major determining factor in the maintenance and improvement of the our marine fishery resources.

COUNCIL CHAIRMEN'S POSITIONS: All Council Chairmen support this Amendment.

TESTIMONY OF STEPHEN A. MONSANTO, CHAIRMAN
CARIBBEAN FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Mr. Chairman and Subcommittee members, my name is Stephen Monsanto and I am the Chairman of the Caribbean Fishery Management Council. I appreciate being able to appear before you today to present testimony on behalf of the Fishery Management Council Chairmen.

I would like to address the proposed NOAA Fisheries FY 1990 budget or perhaps I should say address the inadequacies of the proposed budget. As you are aware, the Councils and all participants in management of fisheries under the Magnuson Act are largely dependent on NOAA Fisheries programs to provide the management data and analyses; basic research on and monitoring of the fisheries; enforcement, cooperatively with U.S. Coast Guard; and technical support in processing management actions. All of these areas of responsibility are critical to proper management of the nation's fishery resources, and yet support in these areas has been continually declining as a result of budgets that are annually reduced in terms of real dollars. We believe the current NOAA budget proposed by the Administration does not make the necessary commitment to manage and conserve our fisheries resources and if funded at the requested level would essentially make effective fisheries management impossible.

At a minimum, we support a NOAA Fisheries budget equal to the FY 1989 level. We believe it should be much higher, but appreciating the difficult task before you in balancing the budget, we hope you will authorize a level that provides for moderate increases in critical areas. Two critical areas of concern that should receive increased funding are fisheries data collection and law enforcement. These perhaps represent the two weakest links in the Magnuson Act fisheries management process. Without accurate fisheries data for the Councils to base their management decisions on and adequate law enforcement to insure those decisions are carried through, the whole management system is doomed to failure.

Mr. Brennan has indicated to us in the past that fisheries management under the MFCMA will be one of the highest priorities of his agency; therefore, we feel that if adequate funding is made

TESTIMONY OF STEPHEN A. MONSANTO

available, he will insure this priority is effectively realized. Considering the tremendous value of our commercial and recreational fisheries to the local and national economies, we believe sufficient funding to properly manage these renewable resources should be a high national priority and strongly recommend NOAA Fisheries be adequately funded to accomplish their fisheries management mission.

Most of the programs in the NOAA Fisheries budget are important to us individually or collectively as Councils. Other Chairmen will emphasize programs of importance to their regions.

Thank you for your time.

TESTIMONY OF WILLIAM W. PATY, CHAIRMAN
WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Chairman Studds and members of the Subcommittee, I am Bill Paty, Chairman of the Western Pacific Fishery Management Council. Thank you for this opportunity to address the Committee on the funding needs of the eight Fishery Management Councils under the MFCMA.

Historically, funds appropriated by Congress to manage our fishery resources under the MFCMA have been used by the Councils to meet their programmatic and administrative needs. In FY 1978 programmatic funding made up approximately 27% of the Councils total budgets. These programmatic funds were used by the Councils primarily to collect management information, through short-term studies in cooperation with state agencies and universities, that NOAA Fisheries was unable to obtain because of short falls in funding and manpower or lack of expertise or ability to collect. Since FY 1980, the MFCMA has been relatively level funded, while over the same time period the Councils' management responsibilities have increased greatly. To compensate for this increase in Council management activity, and corresponding increase in dollars needed to operate, the Councils have had to use more of their funding resources in the administrative area. This has resulted in no programmatic funding being available in the Councils CY 1989 budgets. We have now reached the point where using programmatic dollars to meet administrative needs is no longer an alternative. Council programmatic funds are non-existent.

These basically static budget years have significantly affected the operations of the Councils. All Councils have had to adjust their activities in one way or another by reducing the number of Council meetings and/or number of committee meetings held between Council meetings, reducing the number of public hearings for each amendment and generally affecting public involvement by holding multiple meetings in the most cost-effective locations, etc. In many instances, Councils have reduced staff or filled vacancies with less experienced (i.e. less expensive) personnel. We have now reached the point of having to postpone development of

TESTIMONY OF WILLIAM W. PATY

needed FMPs. The reduced funding levels have affected the efficiency and effectiveness of all our operations.

The Councils' fishery management responsibilities under the MFCMA continue to grow as does our need for additional funding to meet those responsibilities. However, the Council Chairmen are very much aware of the constraints on Congress in its efforts to achieve a balanced budget. We, therefore, are requesting what we consider to be a modest and reasonable increase, a funding level of 8.7 million dollars for the eight Councils. This represents the total dollars requested by all the Councils for the 1989 funding year and is a realistic estimate of what is needed at a minimum to carry out most of our responsibilities under the MFCMA. My fellow Chairmen will present additional comments on the budget and their operations.

At Chairman Studds request, you have already received a summary of the eight Councils' five year funding expenditures. We will be glad to provide any further information you may desire.

Again, thank you.

TESTIMONY OF JOHN G. PETERSON, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Mr. Chairman, and members of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, I am John Peterson, Chairman of the North Pacific Fishery Management Council. I appreciate this opportunity to appear before you with my colleagues from the other Regional Councils to identify the changes we are seeking to the Magnuson Act and to highlight major issues facing the fish industry and the Councils.

Chairman Knight of the South Atlantic Council has provided the dozen or so proposals supported by the Council Chairmen. Two of them, Proposal No. 1 which would add a new Purpose to the Act to eliminate high seas interceptions of U.S. salmon and steelhead, and Proposal No. 12 which would remove limitations on fees and allow for regional cost recovery programs to address funding needs for observer, data gathering, and limited access systems, are of particular interest to the North Pacific Fishery Management Council.

The high seas interception of North American salmon by driftnet fleets from Taiwan, Korea and Japan is perhaps the most explosive issue now facing North Pacific fisheries. Fishermen all along the Pacific Coast have voiced outrage over these interceptions, especially with returning salmon runs being so disappointing last year. This issue has received national press coverage and the attention of environmentalists, all deploring the continued use of miles-long driftnets that indiscriminately catch and kill everything from fish, to marine mammals, to birds, often breaking loose but continuing to ghost fish and to be hazards to navigation.

The North Pacific Council has urged the Departments of Commerce and State to take immediate action to control the foreign fleets that are capturing our salmon. We urgently need to find a solution to this problem and are requesting your help to strengthen the Magnuson Act by adding to Section 2 this new Purpose to eliminate high seas salmon and steelhead interceptions.

TESTIMONY OF JOHN G. PETERSON

A second issue of paramount importance to the North Pacific Council is the growing lack of information on which to base sound management decisions. With the phasing out of foreign observer programs, we no longer have adequate information coming in from the fishing grounds to monitor the fisheries and implement effective management measures.

This past January the North Pacific Council went on record declaring that the lack of observer data for domestic fisheries was preventing the Council from meeting its obligations under the Magnuson Act. The Council urgently petitioned the Secretary of Commerce to direct NOAA Fisheries to prepare and implement an observer program and provide the funding necessary to correct this deficiency as rapidly as possible.

Unfortunately, federal funding seems to be drying up and these critical data needs will go unmet unless other sources can be tapped. To the fishing industry's great credit, there seems to be growing support to recover the costs of data gathering, observer, and perhaps other programs from the users of the resource. Proposal No. 12 in the Chairmen's package would remove current limitations in the Act that fees not exceed administrative costs and add a discretionary provision to fishery management plans to allow the Councils to establish regional cost recovery programs to fund such urgent needs as observer coverage and data gathering.

I also want to put in a good word for HR 1554, The Marine Resources Support Act, introduced by Congressman Young on March 21, 1989. This bill would provide an alternative source of funds for implementation of the Magnuson Act and the Marine Mammal Protection Act by authorizing the regional fishery management councils to require resource users to pay fees as part of a fishery management plan. We seek your serious consideration of Congressman Young's bill so we may move forward quickly with a program to secure the funds so necessary for fishery management.

There are several other issues of great importance before the North Pacific Fishery Management Council. A particularly critical problem is the uncontrolled, unmonitored foreign fishery on pollock in the so-called Donut Hole of the Central Bering Sea outside the 200-mile fisheries jurisdictions of the U.S. and Soviet Union. Over 1.3 million metric tons of pollock are being taken annually in that fishery by Japan, China, Poland and Korea, an amount equivalent to the U.S. pollock fishery inside our Exclusive Economic Zone. We do not know the impacts of those fisheries on our own stocks, on our markets, or on the future of the U.S. industry.

TESTIMONY OF JOHN G. PETERSON

The North Pacific Council has urged the Secretary of State to move quickly and decisively to control those fisheries, unilaterally, bilaterally, or any way possible. And yet there does not seem to be strong leadership on the part of State to initiate a meaningful plan of action. We ask your help in prevailing on the Department of State to bring these foreign fisheries under control in order to protect the resource and the U.S. industry that depends upon it.

Other issues before the North Pacific Council are: (1) bycatch, wastage, and discards--a complex and thorny set of problems; (2) inshore-offshore priorities, including the growing controversy between shorebased and floating operations; (3) full utilization, which may require the prohibition of roe stripping operations that discard unused carcasses; and (4) the recent oil spill disaster which is expected to negatively impact fish populations for years to come. As we deliberate these issues, various segments of the industry will be both stressed and distressed, so I am confident you will be hearing much about them.

And, finally, Mr. Chairman, I call your attention to the funding document attached to my testimony which shows industry support of the North Pacific Council's research and management needs. It describes seven critical funding needs that are supported by the North Pacific Fisheries Coalition which represents 19 major fishing, processing, and marketing associations of Alaska, Washington, Oregon, and California. The document was circulated by industry representatives when they visited Senate and House delegations in early April. The funds requested will help us better address many of the critical issues I've highlighted for you in my testimony.

Again, thank you for this opportunity to appear before you. The fishing and processing industry looks forward to your regional hearings in Seattle and Alaska.

Attachment

ALASKA, OREGON, AND WASHINGTON
NORTH PACIFIC FISHERIES COALITION

THIS IS AN URGENT CALL TO ALL SENATORS, CONGRESSMEN,
AND THEIR STAFFS INVOLVED IN BUDGET APPROPRIATIONS
FOR NOAA FISHERIES FOR FY 1990

we need your help NOW! The Administration has submitted a fisheries budget for FY 1990 that will effectively gut NOAA's ability to provide data collection, research, management, and enforcement critical to sustaining the long term health of the nation's rich, renewable fisheries resources.

'OAA Fisheries' responsibilities have sky-rocketed! A robust, new commercial fish industry has developed in the Pacific Northwest and Alaska more rapidly than ever expected. Fueled by the Magnuson Fishery Conservation and Management Act, we've wrestled our fisheries resources away from the foreign stranglehold of just ten years ago. This exponential growth, compounded by new laws and obligations, has vastly increased the mission of NOAA Fisheries.

We're particularly concerned with fisheries off Alaska. They are at a critical threshold: we've almost fully "Americanized" the fishery, the stocks are abundant, but domestic problems — bycatch, allocations, lack of data, increasing fishing power, uncontrolled foreign fishing outside 200 miles, illegal foreign fishing inside 200 miles — are cropping up rapidly, all in dire need of attention by NOAA Fisheries, the North Pacific Fishery Management Council, and YOU!

The fisheries conducted in the waters off the Pacific Northwest and Alaska currently produce over 5 billion pounds of edible seafood which roughly equals that taken by all other states combined. It is particularly important to note that fishermen operating off Alaska alone catch more than 60 percent of all fish harvested from the U.S. Exclusive Economic Zone (EEZ). The wholesale value of these fish is close to \$3.5 billion, and the extensive resources of the region support over 30,000 fishermen and 16,000 processing workers from Alaska, Washington, and Oregon. These numbers are exclusive of those employed in shipbuilding and maintenance, and various other industries supporting the fishing industry.

Nowhere else in the U.S. has such an explosive growth in fisheries occurred since the passage of the Magnuson Fishery Conservation and Management Act (MFCMA) in 1976. The vast bottomfish resources in the Gulf of Alaska, Bering Sea, and off Washington and Oregon which were largely exploited by foreign vessels at that time, are now almost totally Americanized. The Pacific Northwest and Alaska whitefish industry, which was almost non-existent in 1980, now consists of over 42 modern factory trawlers and motherships, 140 joint venture and shoreside trawlers, and 1,560 longline vessels with a capitalized value of over 1.52 billion dollars. About one-half of this investment has occurred in the last three years. These U.S. fleets alone landed over 4 billion pounds of cod, pollock, flounders, and other whitefish in 1988 worth over \$675 million.

The aggregate of the Pacific Northwest and Alaska fisheries now support an export industry worth over \$1 billion — nearly 70 percent of the nation's total fishery exports. The significant growth and contribution to the economy of the region and nations can only be continued and expanded if there are adequate funds for research and management. It is rather frustrating and ironic that the explosive growth in the fisheries of the region has been parallel with cuts in NOAA support for fisheries research, vessels, field programs, and general fisheries research. The continued development and conservation of the U.S. fisheries desperately needs your support to ensure their long-term productivity and rational and wise use of the fisheries and other living resources of the region.

The North Pacific Fisheries Coalition represents the major fishing, processing, and marketing associations of Alaska, Washington, and Oregon whose members operate off Alaska. The three California industry associations listed below also support the seven critical funding needs highlighted in this document. These groups represent the vast majority of the industry and are adamant in their request that proper funding be made available to properly manage the aquatic resources upon which their livelihood depends:

Alaska Crab Coalition
American High Seas Fisheries Assn
Alaska Groundfish Data Bank
Fishing Vessel Owners Assn
Kodiak Longline Vessel Owners Assn
North Pacific Vessel Owners Assn
Oregon Trawl Commission
United Fishermen of Alaska
Eureka Fisheries
Pacific Coast Federation of Fishermen's
Associations

Alaska Factory Trawlers Assn
Alaska Druggers Assn
Bering Sea Fishermen's Assn
The Highliners
Midwater Trawlers Cooperative
Northwest Fisheries Assn
Pacific Seafood Processors Assn
United Fishermen's Marketing Assn
Fishermen's Marketing Assn

WE SEEK YOUR VIGOROUS AND CRUCIAL SUPPORT FOR AN EFFECTIVE
NOAA FISHERIES BUDGET FOR FY 1990 AND PARTICULARLY FOR THE SEVEN
HIGH PRIORITY FUNDING NEEDS OUTLINED IN THE FOLLOWING PAGES!

SEVEN CRITICAL FISHERIES FUNDING NEEDS FOR FY 1990

Critical Activities	1989 Currently Available	1990 Administration Request	1990 Needs Total	1990 Additions Requested
Bering Sea and Gulf of Alaska Groundfish and Crab Research	\$ 1.0 million	\$ 0	\$ 4.1 million	\$ 4.1 million
Regional Fishery Management Councils	\$ 7.23 million	\$ 3.47 million	\$ 8.7 million	\$ 5.23 million
Domestic Observers	\$ 130,000	\$ 0	\$ 7.5 million	\$ 7.5 million
Enforcement and Surveillance	\$ 7.23 million	\$ 7.37 million	\$ 9.37 million	\$ 2.0 million
High Seas Salmon Interceptions	\$ 140,000	\$ 0	\$ 170,000	\$ 170,000
Pacific Fisheries Information Network	\$ 700,000	\$ 0	\$ 3.0 million	\$ 3.0 million
West Coast Groundfish Research	\$ 940,000	\$ 0	\$ 1.45 million	\$ 1.45 million
TOTAL SEVEN CRITICAL NEEDS	\$ 17.37 million	\$ 10.84 million	\$ 34.29 million	\$ 23.45 million
These seven add-ons are \$16.92 million over funds currently available for 1989 and \$23.45 million over the FY 1990 Administration request.				

BERING SEA AND GULF OF ALASKA GROUNDFISH AND CRAB RESEARCH
(\$4.1 million is needed but the Administration has requested nothing!)

Biological information on the health and abundance of the fisheries resource is critical for sound management. Data on stock structure, life history, population dynamics, ecosystem interactions all are crucial to the mosaic of information needed to truly understand the effects of fishing and to make competent management decisions.

Two million dollars is needed for research on the pollock stocks being hit extremely hard by the uncontrolled foreign fishery of more than one hundred vessels outside 200 miles in the Donut Hole of the central Bering Sea. *Over 1.3 million metric tons of pollock have been taken in that uncontrolled, unmonitored fishery alone — equivalent to the U.S. pollock fishery inside 200 miles!* What are the impacts on our stocks, on our markets, on the future of U.S. industry?

We gain the upper hand in negotiations if we have vital resource information.

Answers are needed now! Resource surveys will provide the background for sensitive negotiations with the Soviets, Japan, China, Poland and Korea on controlling that fishery.

The resources cannot be properly managed without stock assessment information. The other \$2.1 million will be used for charter and research surveys to replace foreign cooperative research. It will support triennial groundfish and crab surveys, acoustic and midwater trawl assessments, bycatch surveys, crab surveys in the US-USSR transboundary area of the Bering Sea, Eastern Gulf of Alaska groundfish surveys, particularly for sablefish, and Western and Central Gulf of Alaska pollock surveys.

REGIONAL FISHERY MANAGEMENT COUNCILS

(\$8.7 million is needed; the Administration has requested only \$3.47 million)

The Regional Fishery Management Councils have proven their worth since being established by the Magnuson Act to carry out the stewardship of the nation's marine resources. Any doubts whether the Councils would toe the mark in conserving and managing the fisheries wealth of the nation have been dispelled as they have grappled with more and more difficult and contentious issues such as bycatch, allocations among domestic fishermen, expanding fishing power, and competition for fishing grounds.

The work loads have increased tremendously as the fisheries have developed: more information to be analyzed, more meetings, public hearings, and workshops! Critical long-range planning to develop sound management systems for the fisheries! The need for more and better data collection.

The Pacific and North Pacific Fishery Management Councils now have increased responsibilities and commitments to resolve all the problems that go hand-in-hand with an ever-expanding, dynamic U.S. fishery.

Full funding for the Councils is needed to carry out their responsibilities. The fishing industry itself spends its hard earned money to participate in the Council process. This money is wasted if the process itself cannot function due to lack of funds.

DOMESTIC OBSERVER PROGRAM

(\$7.5 million is urgently needed; the Administration requested nothing!)

Data sources from the mandatory observer program on the foreign fleets are quickly drying up. Foreign joint ventures with observers in the Bering Sea ended in early March, leaving the fishery for the rest of 1989 as a totally domestic effort with very little data coming in from the fishing grounds.

The Councils need observer data to manage the fisheries! In January the North Pacific Council declared that the lack of observer data was preventing the Council from meeting its obligations under the Magnuson Act. The Council petitioned the Secretary of Commerce to prepare and implement an observer program and provide the necessary funding.

Data gathering is one of our most critical issues.

There is no way around the problem — either the data are made available or managers make uninformed decisions that may jeopardize the resource or become very conservative and establish regulatory schemes that cost the industry efficiency and their competitiveness on the world market. There can be no elegant solutions to problems such as bycatch if the Councils do not have the information with which to manage.

Recent amendments to the Marine Mammal Protection Act mandate observers on commercial fishing vessels. The agreement between the commercial fishing industry, the environmental community, and the administration contemplated sufficient funding to satisfy that mandate. Congress concurred in that agreement and understood that without additional funding observers will not be available and needed mammal and fishery data will not be collected. \$7.5 million is the minimum needed to facilitate a nation-wide living marine resource observer program and constitutes a new add-on funding requirement. This observer program is of high priority for the collection of vital fisheries information and at least half of this amount may be needed in the Bering Sea and the Gulf of Alaska.

ENFORCEMENT AND SURVEILLANCE

(\$9.37 million is needed; the Administration requested \$2 million less)

What is the merit in having the soundest management regime and well crafted regulations if no one is there to enforce them? Enforcement and surveillance are critical to the well being of the industry and the resource. They ensure fair play and also deter foreign fishermen from attempting to fish illegally within the U.S. 200-mile limit. It took a privately chartered aircraft to find the seven Japanese trawlers raiding our Zone last January. We need to beef up enforcement.

The additional \$2 million will buy more NOAA Fisheries enforcement agents who contribute to the welfare of America's vast fishery resources by investigating violations of the Magnuson Act, the Marine Mammal Protection Act, and all other federal statutes that govern our fisheries.

**Without adequate enforcement, all management efforts
and international agreements designed to conserve
marine resources are exercises in futility!**

These agents provide on-the-grounds monitoring of catches, species data, biological information, and bycatches. They are heavily relied upon by the U.S. Coast Guard to provide continuity in training for their crews so that they can carry out their enforcement mission.

HIGH SEAS SALMON INTERCEPTIONS

(\$170,000 is needed but the Administration has requested nothing!)

The high seas interception of North American salmon by driftnet fleets from Taiwan, Korea and Japan is perhaps the most explosive issue now facing North Pacific fisheries. And yet the Administration has not seen fit to earmark any extra funds for collecting data on the impacts of these pirate fisheries.

Fishermen up and down the Pacific Coast have voiced great concern over these interceptions, especially with returning salmon runs being so poor last year. Their outcries have received national press coverage and the attention of environmentalists, all deploring the continued use of miles long driftnets that indiscriminately catch and kill everything from marine mammals, to fish, to birds, often breaking loose but continuing to ghost fish. They also can foul props and be a hazard to navigation.

The North Pacific Council is seeking to amend the Magnuson Act to strengthen their ability to stop the high seas interceptions. They are urging the Departments of Commerce and State to take immediate action to control the foreign fleets that are capturing salmon returning to North American streams.

**The United States urgently needs to find a solution
to the high seas interception problem.**

The \$170,000 will support studies on the origin of the salmon in high seas catches which will in turn help to structure the settlement of this grievous problem.

PACIFIC FISHERY INFORMATION NETWORK (PACFIN)
(\$3 million is needed; the Administration requested nothing!)

Another information problem! *There can be no really effective management without adequate, timely information.* PacFIN provides such information — not only for managers, but for industry to track the catches in statistical areas and better plan their operations.

PacFIN is the first regional data network — drawing together data streaming in from the fisheries off Alaska, Washington, Oregon, and California, into a central data base accessible to all.

It was no easy task building this unique data acquisition, management, and reporting system. Many years of hard effort went into it on the basis that it would help the Councils and in turn NOAA Fisheries and the States to better manage their fisheries. The Pacific States alone have contributed over \$25 million in data collection and processing for this multi-agency, cooperative effort which includes the Pacific States and Islands and NOAA.

NOAA has patchworked funding for this program at inadequate levels in the past. *It is now time to step up to the plate to support this regional data base so critical for managing the fisheries under Council and NOAA Fisheries jurisdiction.*

WEST COAST GROUND FISH RESEARCH
(\$1.45 million is needed; the Administration has requested nothing!)

The largest fishery on the West Coast off California, Oregon, and Washington is the rockfish and whiting fishery. A large industry depends on these stocks. The fishing effort could increase dramatically if trawlers, closed out of the joint venture fisheries off Alaska, head south for additional opportunities.

To maintain these groundfish stocks, funds are needed for the Tiburon Laboratory and NOAA Fisheries Northwest and Alaska Fisheries Center for:

- continued research and surveys on rockfish and whiting
- annual estimates of stock abundance and recruitment
- assessment of the sablefish resource
- assessment of the Dover sole resource

These valuable resources are managed by the Pacific Fishery Management Council.

TESTIMONY OF JAMES F. MCHUGH, CHAIRMAN
MID ATLANTIC FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Chairman Studds, members of the Subcommittee, I am Jim McHugh, Chairman of the Mid Atlantic Fishery Management Council. I welcome this opportunity to appear before you and present testimony relative to the MFCMA. There are a number of important issues I would like to address on behalf of the Council Chairmen.

One issue I will touch on only briefly at this time is the recommendation by the majority of the Council Chairmen that SECTION 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES be amended or deleted to the effect that tuna are no longer an exempted species. The Council Chairmen's majority and minority positions on this issue will be presented at the Subcommittee hearing that we understand will be scheduled to specifically address tuna.

The Council Chairmen are recommending that SECTION 201. FOREIGN FISHING be amended to delete language on the alternate method of establishing Total Allowable Level of Foreign Fishing (TALFF) and the Act be amended to ensure that establishment and release of TALFF provide benefits to the U.S. fishing industry and the nation. Section 201(d) was earlier amended to create what has now become a complicated process for decreasing the TALFF for a particular species. It was an early attempt to get around the interpretation of the arithmetic in the original MFCMA ($TALFF = OY - DAH$) coupled with fishery management plans that required amendments to set annual quotas. To the best of our knowledge, the provision was used only once, for butterfish.

The current generation of Fishery Management Plans (FMPs) make the Annual Fishing Level provision of 201(d) unnecessary. Given the current MFCMA and the concept of framework FMPs, there is greater flexibility in specifying the various quantities (Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Joint Venture Processing, and TALFF). The concept of Allowable or Acceptable Biological Catch (ABC) has also been introduced. Additionally, establishing the specifications annually is generally a matter of a proposed rulemaking or a

notice action. In light of these evolutionary measures, portions of Section 201 are no longer needed.

Another recommendation from the majority of the Chairmen is that SECTION 204. PERMITS FOR FOREIGN FISHING be reviewed for purposes of revising the formula by which foreign fishing fees are calculated to eliminate the inclusion of the amounts of fish harvested in the territorial sea, shellfish and the recreational fishery from the formula; and to further review Section 204(b)(10)(F) to reconsider the purpose for which foreign fees are escrowed.

It is further recommended that in view of the fact that the NOAA Fisheries budget is subjected to continued statutory reductions, all fishing fees collected be dedicated to the purpose of supporting the responsibilities of the NOAA Fisheries in their support of the MFCMA including research, data gathering and enforcement.

The current formula includes recreational catch and shellfish catch; hence lacks equity. Excluding territorial sea, recreational and shell fisheries will increase base revenue by about 30%. This would raise the fees to foreign nations to more closely approximate the actual cost of having them fish in our EEZ. The fees collected could be made available to provide funding for NOAA Fisheries to fulfill their legislated fisheries mandates.

One issue the Chairmen have discussed at their past several meetings is the Paperwork Reduction Act. There is agreement among all the Chairmen that the PRA is a major impediment in the Councils efforts to obtain the best data available with which to manage our marine fisheries. The Councils are now caught in a double squeeze as to data availability that affects our ability to prepare fishery management plans and amendments in accordance with the MFCMA and NOAA Rules and Guidelines. This squeeze occurs due to the combined effects of a mandated percentage decrease in paperwork (data acquisition) by government agencies and the continually reduced budget for data collection and analysis by NOAA. This translates into a severe decline in our ability to obtain fisheries data, and is adversely affecting the quality of fishery management plans and the ability of the Councils to properly manage our fishery resources.

We are requesting that Section 302 (j) of the MFCMA be amended to provide that vessel log books and processor/dealer reports required by fishery management plans and amendments be exempted from the Paperwork Reduction Act. The MFCMA is presently a data poor management

system and if the Councils are to keep faith with the public by allowing participation as required under the MFCMA, our ability to collect the best information available to perform the required management analysis must be improved. In many instances, the Councils and the management system are criticized by the fishing industry because of an inability to collect data the industry has available and would willingly provide. Amending this Section to provide that vessel logbooks and processor/dealer reports required by an FMP be exempted from the PRA will greatly improve the situation and is one of the least expensive forms of data collection.

The final amendment recommendation I will address deals with amending Section 303 (e) DATA COLLECTION PROGRAMS to allow for the collection of the data that is mandated in Section 303 (a). The confidentiality of statistics Section 303 (d) was amended in 1986 to provide Council staff access to needed data. However, Section 303 (e) was not amended at that time to provide for the collection of confidential data under a 303 (e) request. We believe the retention of the present Section 303 (e)(2) language during the 1986 amendments was an oversight. Currently, the requirements in Section 303 (a)(5) cannot be met because of restrictions imposed under Section 303 (e). To fully comply with this Section 303 (a), Section 303 (e) must be amended.

The Mid Atlantic Council is extremely concerned about the continued decline in available resources to obtain accurate data with which to manage our fisheries. Fishery management plans for several species cannot be completed in accordance with the MFCMA due to the lack of pertinent data required to be used by the Councils. Our Council's recent request to NOAA Fisheries for shark data cannot be met due to funding not being available. The Council is also in immediate need of required information to complete a plan on fluke and bluefish (one of the most important recreational species). The five Councils managing billfish and swordfish also need additional information on these species as well as bycatch data in the tuna fishery in order to properly protect these very important species.

I urge that the NOAA Fisheries budget at a minimum be maintained at current levels and that fisheries statistics and data collection programs be increased to meet the needs of good, sound fisheries management.

Thank you.

TESTIMONY OF RICHARD A. SCHWARZ, CHAIRMAN
PACIFIC FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Mr. Chairman, Subcommittee members, I am Richard Schwarz, Chairman of the Pacific Fishery Management Council. I appreciate the opportunity to appear before you today.

The Council Chairmen unanimously recommend that Congress strengthen our collective ability to influence actions which will restore, maintain and protect fishery habitat. The Magnuson Act was amended by P.L. 99-659 to allow for Council comments of any activity by a state or federal agency which may impact fish habitat, and to require that Council Fishery Management Plans include information on habitat. These were very useful amendments which gave the Councils their first entree into habitat issues affecting ocean fisheries. Habitat degradation and pollution have been and continue to be significant problems affecting marine and anadromous fishery resources. Wetlands continue to be lost or degraded at alarming rates, coastal pollution is increasing, and the freshwater habitat of anadromous fish is being adversely affected. Your December 1988 oversight report, "Coastal Waters in Jeopardy," is a timely and cogent description of the problems, and we applaud your attention to this critical issue. We recommend that existing laws and authorities be used to the fullest extent to halt further aquatic habitat degradation and, where appropriate, that legislation be strengthened to assure that existing habitat is protected.

The Magnuson Act should be amended to enunciate Congressional policy or intent with regard to habitat protection. This will strengthen the Councils' recommendations to federal agencies implementing actions which adversely affect ocean fisheries. The Councils are guided by a policy of no net loss of the productive capacity of marine, estuarine and freshwater habitats which sustain commercial, recreational and native fisheries. With your help, we will continue to monitor and comment on proposed actions which impact fishery resources and will hopefully improve our ability to implement this policy. We believe that ecosystem health is the key measure of success in controlling pollution and habitat impacts, and that habitat requirements of fish and shellfish should be given priority consideration in any decision which impact them.

TESTIMONY OF RICHARD A. SCHWARZ

In regards to funding issues, the Pacific Council is particularly concerned about adequate funding for the Pacific Fisheries Information Network (or PACFIN). This is a cooperative fishery data collection, analysis and monitoring program which builds on existing state programs to meet federal management requirements. A fully funded system would provide needed data to the Western Pacific, North Pacific and Pacific Councils. The Pacific Council uses PACFIN data to make critical inseason management decisions affecting the livelihoods of thousands of fishermen. Without these data, the risk of overfishing or underfishing is increased, with loss of benefits in both cases. The Administration included PACFIN in its budget submission to Congress, but tied it to passage of a marine fishing license. We hope that Congress will fund it despite this linkage.

Again, thank you.

TESTIMONY OF WILLIAM D. CHAUVIN, CHAIRMAN
GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Chairman Studds and members of the Subcommittee, I am Bill Chauvin, Chairman of the Gulf Council. Thank you for this opportunity to appear before your Committee. On behalf of the Chairmen of the eight Councils, we are requesting the Committee consider amending Section 302(a) (1) through (6) and (8) to specify there be an obligatory Council seat from each state. All of the Chairmen support this proposed amendment.

Until January of this year, an obligatory seat was provided by federal regulation under 50 CFR Part 601. Last fall NOAA Fisheries proposed in draft regulation, the elimination of the obligatory seat provided by federal regulation since 1977. Their rationale was that this provided more discretion to the Secretary in appointing members. All of the Councils and many state Governors opposed their proposed revision. In the final 601 regulation published this January, NOAA Fisheries revised their position only to the extent that the member selected would be from persons nominated by the Governor of that state for both the state seat and any other at-large seat currently held by another state.

The Councils feel that the obligatory seat should be maintained and that this is consistent with the legislative intent since the Senate bill for the Magnuson Act made all seats obligatory. The success of most of our plans is dependent on cooperative action by the states in implementing compatible rules in their jurisdictions. Therefore, we believe the Governors should be able to nominate three or more persons to an obligatory seat representing that state.

The Councils are requesting that a new subsection be inserted into Section 304 that would provide that regulatory amendments be processed within the same statutory time periods as plans or amendments.

Regulatory amendments were intended to be a mechanism whereby certain modifications to an FMP could be processed through the system and implemented faster than regular FMP

amendments, but this mechanism has not worked in many instances. Regulatory amendments have no mandatory schedule for review and approval and are not always processed expeditiously. One Gulf Council regulatory amendment required almost three years for implementation. Other Councils have experienced the same delays with regulatory amendments. NOAA Fisheries has encouraged the Councils to include framework measures within their FMPs to allow for modifying plans without having to amend the FMP. Many such framework measures are implemented by regulatory amendment. Unfortunately, because there is no mandatory time-frame for review and approval, the amendments are relegated to a secondary status and are not processed expeditiously, thereby creating significant management problems. The delay generally occurs at review levels above NOAA Fisheries. The inclusion of regulatory amendments in Section 304 would in no way prevent them from being processed and approved more rapidly than FMPs, however it does insure they will be processed in a timely manner.

The Chairmen have jointly submitted an overview of funding needs for fishery management, enforcement, research, and data collection which generally support the need for a NOAA Fisheries budget equal or greater than that for FY 1989.

The Councils are jointly requesting a funding level of \$8.7 million. That level is a realistic estimate of the amount needed to allow us to carry out most of our responsibilities under the Magnuson Act. Our Council, like the others, has had to annually reduce our activities over the last six years to live within the available funding. We are now operating with six meetings each year, instead of eleven. We've been forced to virtually eliminate most committee meetings between Council sessions, and we cannot convene our SSC and Advisory Panels frequently enough to review all FMP or amendment actions. There are now eight FMPs in effect for the Gulf, and we are faced with developing plans for sharks and butterfish. Over the last six years, funding for programmatic studies by the Councils to gather management information has continually decreased and none has been available for the last two years.

During the same period, funding for NOAA Fisheries for data collection and analyses, for research, for enforcement and for management has similarly declined. For example, there are only 18 NOAA Fisheries enforcement agents for the entire Southeast, including Puerto Rico and Virgin Islands.

We, in the Gulf, support a higher level of funding for NOAA Fisheries since they have been and are severely constrained in providing the support needed to manage our fishery resources.

TESTIMONY OF WILLIAM D. CHAUVIN

Since most of our responsibility is for fisheries that must be cooperatively managed by the states and the federal government, we also support restoration of funding of the Interjurisdictional Fisheries Grants to the states and commission. We also support full funding for cooperative state and federal programs such as SEAMAP, upon which our management data for shrimp and reef fish depends, and for MARFIN, which provides management data for mackerel and red drum. We also support a significant increase in funding for collection of statistical data from recreational and commercial fisheries and for the processing and analyses of these data by NOAA Fisheries. In summary, our information, management and enforcement requirements have been constantly increasing while support for these activities has been declining.

Thank you.

TESTIMONY OF DAVID V. D. BORDEN, CHAIRMAN
NEW ENGLAND FISHERY MANAGEMENT COUNCIL
ON THE MFCMA
BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
MAY 2, 1989

Chairman Studds and members of the Subcommittee, thank you for allowing me to appear before you today. My name is David Borden and I am Chairman of the New England Fishery Management Council. I would like to take this opportunity to address several amendments to the Magnuson Act that are being proposed by the Council Chairmen and to mention briefly other matters that concern the New England Council.

The Chairmen recommend that SECTION 302. REGIONAL FISHERY MANAGEMENT COUNCILS, subsection (j) be amended to allow that fishery management plans and amendments are no longer subject to the National Environmental Policy Act (NEPA).

NEPA was enacted to ensure that adequate consideration be given to federal actions that might affect the environment. Fishery management activities, by their nature, conserve living marine resources for the long-term benefit to society. The most recent amendments to the Magnuson Act have enhanced the Councils ability to address environmental issues that affect fisheries habitat and as you have already heard, the Council Chairmen support further strengthening of the Act in this area.

Each fishery management plan or amendment now prepared is very similar to an Environmental Impact Statement (EIS). The majority of the Council Chairmen feel the preparation of an EIS as required by NEPA is therefore duplicative and unnecessary. Removing this requirement would eliminate some procedural hurdles that slow the plan and amendment process and allow the Councils to use their limited resources in more productive ways.

We recommend that SECTION 302. REGIONAL FISHERY MANAGEMENT COUNCILS subsection (d) be amended to allow Council staff members to be eligible for reimbursement for actual expenses incurred during the course of Council business.

Staff members use the same types of transportation and facilities as Council members and, as a result, incur similar travel-related expenses. Staff reimbursement for these types of expenses should reflect this.

The Council Chairmen further recommend that SECTION 302. REGIONAL FISHERY MANAGEMENT COUNCILS subsection (j)(3)(A)(ii) be amended by adding language to clarify Council requirements necessary to hold closed meetings and the announcement of such meetings through newspapers. This will allow Councils to close meetings on an ad hoc basis if unforeseen administrative or personnel matters arise that may require closure of a meeting to protect individual rights to privacy. This would only apply to meetings that do not affect the Council management decision process.

The Council Chairmen suggest an amendment to the Act to require that upon written request by a Council, the Secretary will provide within thirty days a written legal opinion as to whether a measure or regulation under consideration by the Council is consistent with the Act and other applicable law and regulations. In the past, the Councils have experienced difficulties getting definitive legal opinions from NOAA General Counsel concerning management measures or regulations under consideration. In some instances, NOAA General Counsel has refused to provide specific legal opinions to the Councils. In other cases, legal opinions provided at the regional level early in the FMP or amendment process have been reversed at the Washington level during FMP review. This has led to wasted Council time and effort and has frustrated management efforts. Although this particular issue has not been a problem recently because of current administration practices, the amendment is proposed in order to avoid future problems as a result of personnel changes in the administration.

Mr. Chairman, I will now offer a few brief comments on behalf of the New England Fishery Management Council. The New England Council has had mixed success in achieving the goals of the management plans for the most important species in our waters. I'm pleased to report that the goals of the Lobster FMP are being fully achieved. In concert with the major lobster producing states, scheduled increases in the minimum size of lobsters are underway and will result in added protection for this valuable resource. The high abundance of Atlantic Sea Scallops which exists in all major resource areas is expected to continue over the next several years. The Council is working closely with the scallop industry to develop alternatives to the current meat count system which has proven burdensome to the industry and has been difficult to implement and enforce.

Problems persist in the multispecies fishery, although there are some reasons for cautious optimism. As has been well publicized, resource abundance of cod, haddock and several other major groundfish species is at historic low levels. The Council is convinced that inadequate enforcement in the Northeast has resulted in a low level of compliance and has been a major factor contributing to these population declines. The Council has been extremely vocal and active in seeking the enforcement support necessary to effectively implement our management programs. It is my intention to submit to the Subcommittee a detailed review of the efforts made by our Council to address the enforcement and compliance problem. I would strongly urge the Subcommittee to fully examine the enforcement issue.

Despite these programs, the flexibility of the Multispecies FMP has allowed fishermen to diversify their operations by targeting a variety of non-traditional species. We also do not expect any further dramatic increase in fishing effort. Recent reports from fishermen indicate that large amounts of small groundfish are beginning to reappear throughout New England.

The New England Council, as well as the seven other Councils, continues to experience funding difficulties. As a result of only minimal increases in the overall funding level for Council operations, less money has been available after meeting administrative needs for programmatic projects. We are now at a point where there is not even enough money for administrative purposes. Furthermore, funds are channeled to the Councils by cooperative agreements under rules pertaining to a wide array of federal grant programs that bear no similarity or relevance to the Councils. This process creates significant procedural delays in fund transfers. We believe Congress should examine both of these aspects of our funding problems.

Section 302 (j)(2)(C) of the Act requires Councils to publish the time, place and agenda of all meetings of the Council, its Committees and Advisors in local newspapers in the major ports of their jurisdiction. Our experience has shown that these legal notices are rarely read and that other means of publicizing our meetings and activities are far more effective. Such newspaper publication costs can reach \$10,000 or more per year. We urge that the notice requirement be made more flexible to allow for more prudent use of funds and more effective communication with the fishing community.

Thank you.

Working for the Nature of Tomorrow.



NATIONAL WILDLIFE FEDERATION

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**TESTIMONY OF
THE NATIONAL WILDLIFE FEDERATION
BEFORE
THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE
ON
H.R. 2061, A BILL TO REAUTHORIZE THE MAGNUSON FISHERY
CONSERVATION AND MANAGEMENT ACT OF 1976**

MAY 2, 1989

**LYNN A. GREENWALT
VICE PRESIDENT, INTERNATIONAL AFFAIRS
NATIONAL WILDLIFE FEDERATION**

Mr. Chairman, my name is Lynn Greenwalt and I am a Vice President of the National Wildlife Federation (NWF). The NWF is pleased to present our views on H.R. 2061, a bill to reauthorize the Magnuson Fishery Conservation and Management Act (FCMA; P.L. 94-265).

The NWF is the nation's largest, not-for-profit, conservation-education organization with 5.1 million members and supporters throughout the U.S. and in 51 state- and territory-wide organizations which comprise about 4,500 local conservation organizations. The NWF consistently supports use of our nation's marine fisheries resources when that use is based on sound science and informed management.

Introduction

The NWF has a strong interest in the reauthorization of the FCMA. Since the mid-1970's, the NWF has supported the nation's right to assert jurisdiction over our marine fisheries resources 200 miles beyond our shores. We have supported reauthorization of the FCMA since its inception in 1976, participated in the deliberations of the Regional Fishery Management Councils established by the FCMA, sought adequate appropriations annually for the FCMA programs of the National Marine Fisheries Service (NMFS), and played a leadership role in supporting the habitat provisions of the 1986 reauthorization (P.L. 99-659). We support reauthorization of the FCMA and are committed to making it better.

The FCMA continues to be our best hope for conserving valuable marine fisheries resources. Enacted to improve conservation of marine fish stocks, especially to protect against overharvest of U.S. fisheries by foreign countries, FCMA "Americanized" the nation's coastal fisheries by increasing allocations to U.S. fisheries and decreasing those to foreign countries. To accomplish this, the FCMA established Regional Fishery Management Councils and provided them, and NMFS, broad authority to manage fish stocks in the Exclusive Economic Zone (EEZ), an area in excess of two million square miles.

The FCMA has done much to accomplish better conservation of marine fisheries resources. Most EEZ fisheries have now been successfully "Americanized," and overharvest of most stocks by foreign countries largely eliminated. The FCMA also has established and refined a mechanism, based on fisheries management plans (FMPs), to better manage many important marine and anadromous species throughout all or most of their ranges. The bounty produced from these fisheries is substantial. For example, 1986 landings of commercially caught fish represent \$3.1 billion (dock side value), with an economic contribution to the nation's Gross National Product estimated at \$17 billion. In addition, recreational anglers spend \$13.5 billion annually in pursuit of marine fish, and Americans consume an estimated 15.4 pounds of fish per capita each year, much of it originating from our marine waters.

Unfortunately, all is not well with marine fisheries conservation in general, and the FCMA in particular. Despite years of experience with the FCMA, many key fish stocks are depressed, loss of habitat critical to fish production continues, and conflict between various user groups intensifies as the fisheries "pie" is reduced. As Chairman Studds has suggested, it is time to take a long, introspective look at the effectiveness of the FCMA 13 years since its passage. From our perspective, what the future holds is not at all reassuring. Despite success in achieving some key objectives, implementation of the FCMA still is lacking in four key areas which need to be addressed promptly.

Four areas of FCMA implementation where major deficiencies reside are in fish habitat conservation, overharvest of stocks by domestic fisheries, tuna management, and inadequate funding for NMFS to carry out its legal responsibilities under the FCMA. We discuss these areas in detail below and offer suggested changes, some of which we have promoted in the past, and some new.

The FCMA Should Place Greater Emphasis on Fish Habitat Conservation

Marine fisheries resources face substantial threats from habitat degradation. Recent reports from the Congressional Office of Technology Assessment (Wastes In The Marine Environment 1987), this Subcommittee (Coastal Waters In Jeopardy: Reversing The

Decline and Protecting America's Coastal Resources: 1988), and various NMFS reports provide abundant evidence of these threats, in the form of degraded coastal and marine water quality and an ever-continuing loss of wetlands.

Loss of marine fisheries goes hand in hand with the loss of estuarine and coastal habitats. FCMA-managed anadromous and estuarine-dependent species, such as the salmonids, shrimp, and red drum are particularly vulnerable to habitat degradation. For example, the NMFS estimates that Columbia River salmon and steelhead stocks have been reduced 75-84% from historic levels due to dams and loss of spawning habitat. Louisiana is losing an estimated 60 square miles of wetlands each year, seriously impacting the fisheries of this state which produces 28% of the total U.S. landings (by weight).

President Bush has joined many commercial and recreational fisheries and conservation groups in calling for greatly improved coastal and marine environmental quality and to achieve a "no net loss of wetlands" goal. The NWF endorses the President's support for these goals and believes the FCMA could provide an important vehicle for their accomplishment. To this end, we suggest Congressional consideration of amending the "Findings, Purposes, and Policy" (Section 2: FCMA) to reflect the seriousness of habitat loss for fish production and the need to protect and conserve fish habitat. An adaptation of President Bush's "no net loss" wetlands policy goal, for example, should be modified to a

"no net loss of fish habitat" goal for the "Purposes" section. This goal already has been included in the Council's habitat policies (described below). We urge Congress to consider incorporation of this concept into the "Findings, Purposes, and Policy" Section.

To make the FCMA a more powerful tool in conserving fish habitats, the NWF recommends the following specific changes.

1. Congress should direct the Councils to use their FCMA habitat conservation authorities more vigorously.

In 1986, habitat conservation provisions were incorporated into the FCMA, essentially codifying the NMFS Habitat Conservation Policy of 1983. These provisions required the Councils to incorporate "readily available" (P.L. 99-659) habitat information in all fishery management plans, and with guidance from NMFS, assess the effect that changes in habitat would have on FCMA-managed fisheries. Further, the 1986 amendments authorized the Councils to recommend conservation measures for federal and state activities adversely affecting fishery resources for which the Councils have management responsibility.

Thus, in 1986, with guidance from NMFS, the Councils began to implement these provisions. An important feature of this effort was the establishment of a habitat conservation policy for each of the Councils, to strengthen their ability to address habitat

issues. The guiding principle of each Council's policy is no net habitat loss, i.e., no net loss of a given habitat's ability to produce fish and their food base.

The Councils have made much progress in implementing the habitat provisions over the past three years. For example, all eight Councils have adopted a habitat policy, and have established protocols for determining when and how to use their habitat conservation authorities. Other examples illustrating the Council's use of this important authority include the following:

- In 1988 the Gulf of Mexico Council held a public hearing to consider the biological and economic effects on shrimp and red drum fisheries expected from a Corps of Engineers project to widen and deepen the Houston Ship Channel. The Council used this public comment to formulate its views on the project, citing its FCMA habitat conservation authority in doing so. The Gulf Council now regularly monitors, and comments on, federal and state activities affecting fish habitats.

- In 1988 the New England and Mid-Atlantic Councils jointly opposed the continuation of sewage sludge dumping at the 106-mile deepwater dumpsite, located off the coast of New York and New Jersey. These comments were central to securing Congressional action for passage of Ocean Dumping legislation (P.L. 100-688) in the 100th Congress.

• The Pacific Council's salmon fishery management plan includes a habitat section which should serve as a model. The plan identifies specific habitat objectives and includes an appendix describing present habitat conditions, the economic value of the fishery, and effects of ongoing activities on fishery production. Examples of the plan's habitat objectives include: to assure Pacific salmon receive equal treatment with other purposes of water and land resource development, and to facilitate vigorous implementation of federal and state programs to restore salmon stocks.

Despite this encouraging evidence that implementation is occurring, the NWF believes the Councils can, and should, use their existing FCMA habitat conservation authorities more vigorously. The two major obstacles preventing more effective use of these authorities are (1) lack of Council staff with technical skills in the habitat area, and (2) low interest by the leadership of some Councils to emphasize habitat conservation. Therefore, as a preliminary step in addressing these problems we urge Congress to provide funding for, and direct the Councils to hire, at least one Full Time Equivalent (FTE) to work exclusively on fish habitat issues. We envision this staff, possessing expertise in fishery biology and habitat relationships, working to develop habitat provisions of fishery management plans and Council comments on development activities affecting FCMA-managed fish habitats. Second, Congress should encourage the Councils to be more active



in habitat conservation. We believe in-house expertise and heightened priority would yield substantial habitat conservation benefits to FCMA-managed species.

2. Congress should amend FCMA authorizing the Secretary of Commerce (NMFS) to play a greater role in mitigating federal activities which have a significant adverse impact on FCMA-managed fish stocks.

The NWF passed a resolution in 1985 (attached) calling for mandatory mitigation of adverse impacts of federal activities on important habitats of FCMA-managed species. This resolution was responsible for NWF's subsequent leadership role in advocating adoption of this important amendment to the FCMA. Although our "mitigation" amendment was not passed during the 1986 reauthorization, NWF continues to believe it necessary for effective federal marine fisheries management. Thus, we urge this Subcommittee to consider it fully again during the current reauthorization.

To some, this type of action is considered drastic. Allowing the Secretary of Commerce to set mitigating conditions for Corps projects which adversely affect FCMA-managed species, for example, might be considered too large an obstacle to the necessary work of the Corps. However, if we are serious about stemming the further erosion of our fish-producing habitat base, then steps must be taken now to fully compensate for the loss of this base. Our

amendment recognizes that the nation's marine fisheries resources are of extraordinary social and economic significance, and that these resources are threatened by habitat destruction, often from federally authorized, funded, or permitted activities. Therefore, all federal agencies conducting activities adversely affecting FCMA-managed fisheries should have the affirmative duty to evaluate, and mitigate, the effects of their actions on these fisheries. A precedent for this proactive model was included in the 1986 amendments to the Federal Power Act (P.L.99-495: Electric Consumers Protection Act). In this statute NMFS was given a strong role in establishing mitigation conditions on hydropower licenses granted by the Federal Energy Regulatory Commission. Within the next few weeks we will submit proposed language for this amendment to the Subcommittee for your consideration.

Congress Should Direct the Councils and NMFS to Use Existing Authorities To Curtail Overharvest and Restore Depressed FCMA-Managed Stocks

We citizens of the U.S. have always assumed that our fish stocks are inexhaustible. This has led to a tradition of overharvest of numerous important stocks. Collapse of the Pacific sardine fishery, extinction of the blue pike from Lake Erie, and the precipitous decline of Atlantic striped bass are testaments to our inability to provide adequate controls on fish harvest. In an effort to prevent overharvest, the FCMA's National Standard For Fishery Conservation and Management states:

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. (Section 301, FCMA):

Implementation of this Section of the FCMA by the Councils and NMFS has been dominated by attempts to regulate harvest levels on fisheries. Current estimates of high levels of abundance for certain species, such as Atlantic mackerel, sea scallops and Alaskan salmon stocks, demonstrate that --in certain instances-- this system can operate effectively.

However, NWF continues to be concerned with many of the FCMA-managed stocks which are at depressed levels due, at least in part, to overharvest. Depressed stocks can be cited for virtually every fishery management region, according to a recent survey of FCMA-managed stocks conducted by the Councils and NMFS ("State of the Fisheries" Memorandum from James W. Brennan, Assistant Administrator for Fisheries, NMFS, March 17, 1989). The following are prominent examples of but a few of the stocks that have been depressed by overharvest:

- New England groundfish biomass has declined 65% from 1977 to 1987. The staples of this fishery, cod, haddock, and yellowtail flounder, are at record low levels of abundance.

- Atlantic swordfish stocks have declined steadily over the past 10 years, especially in older age classes.

- In the Gulf of Mexico, the red drum fishery in the EEZ was closed on January 1, 1988 because of overharvest. Also, extremely valuable white and pink shrimp fisheries are now showing signs of overharvest.

The "State of the Fisheries" confirms what many observers have suspected for a long time: the state of the nation's fisheries is not good, and overharvest is a major reason why.

Although the issue of overharvest is extremely complex, sometimes confounded by research data inadequate to use in establishing good harvest regulations and insufficient law enforcement, excessive fishing effort (excessive harvest capacity) appears to be the principle cause of overharvest. Simply put, it is too many boats, fishing too long, for too few fish. The "State of the Fisheries" plainly documents this. For example, the number of days fished by the New England groundfish fleet increased 73% from 1976 to 1986 on stocks which have been declining in abundance. Lobster, shrimp, spiny lobster, Pacific coast groundfish, and Alaskan groundfish are all fisheries suffering from excessive fishing effort.

The NWF offers two suggestions for addressing the significant problem of overharvest. First, Congress should direct the Councils and the NMFS to better separate conservation decisions from allocation decisions and place a premium on protecting and restoring fish stocks.

Excessive harvest capacity on a fishery generally results in conservation decisions (allowable biological catch) becoming intertwined with allocation decisions (who gets how much). This oftentimes leads to establishing harvest quotas at levels harmful to the health of a stock simply because of the need to satisfy the excessive harvest capacity. In the words of the NOAA Fishery Management Study of 1986:

...the conservation decision, made in the form of an acceptable biological catch (ABC) determination, should be made before it is decided who the users will be. When the two processes are combined in one decision, the pressures are always to add more effort to serve the interests of more users. NOAA Fishery Management Study 1986: Executive Summary.

The NWF believes that, in order to alleviate the problem of overharvest on FCMA-managed fisheries stocks, greater effort must be made to separate these decisions as well as to place greater emphasis on conservation decisions rather than allocation

decisions. After all, allocation is academic if the resource is gone.

NMFS and the Councils appear to be making some progress on this subject as evidenced by the recent publication of a proposed rule to establish a mechanism to aid the Councils in preventing overharvest (Federal Register 53(251):53031-53036). Originating in the recommendations of the 1986 study, the rule proposes to establish a measurable definition of overharvest for each fish stock, or stock complex, affected by a Fishery Management Plan, and to periodically evaluate the effectiveness of the Plans in achieving stated objectives. Congress should monitor implementation of this rule to ensure it is used effectively.

Second, Congress should encourage the Councils and NMFS to adopt policies providing better control of fishing effort.

The key component of the excessive fishing effort problem is the current policy, which allows virtually unlimited access to the FCMA-managed fisheries. If the nation is to solve the problem of overharvest, the Councils and the NMFS must adopt management options which will allow control of access to the fisheries. Commonly dubbed "limited entry," this concept has long been anathema to many fishery groups. Recently, however, continued failure to address the problem of overharvest has led some harvesters --previously opposed to limited access-- to reconsider access limitations. Currently, limited access is being studied

for the following fisheries: New England groundfish, sea scallops, Pacific groundfish, and Alaskan groundfish. Congress should encourage this approach for other overharvested stocks, and should support use of the best alternatives.

Funding For The Implementation of FCMA Is Inadequate

Inadequate funding to implement the FCMA effectively is one of the major obstacles for achieving the objectives of this important legislation. For the past eight years, the Administration has recommended severe cuts in those NMFS programs which implement the FCMA, including research, habitat conservation, law enforcement, and the Councils' management programs. This Subcommittee, Congress, NWF, and other supporters of NMFS' programs have had to work hard just to maintain base funding levels for the agency. In spite of a static funding base, NMFS has been given increased responsibilities as a result of the recent reauthorization of the Endangered Species Act, the Marine Mammal Protection Act, and other pieces of legislation. NMFS and the Councils have been asked to do more with less. It is not working.

Although it is clear that more funding for NMFS is needed, eight years of inadequate funding, and added responsibilities, has obscured how much more money is needed for the NMFS. Therefore, NWF urges Congress to conduct oversight hearings on, or commission an objective study of, NMFS funding needs. An assessment of user fee alternatives should be included in this evaluation.

Tuna Management

The NWF remains concerned about the failure of international tuna management arrangements to protect tuna from overharvest and to protect FCMA-managed species from harmful levels of bycatch from tuna fishing. The decline of Atlantic bluefin tuna is especially worrisome, with western Atlantic stock populations continuing a long decline that first began in the early 1970's.

The NWF joins five Regional Fishery Management Councils in calling for the repeal of Section 102 of the FCMA, which excludes tunas from FCMA-management. If tuna stocks are to be protected, the U.S. must act unilaterally to conserve this resource, as well as other FCMA-managed species adversely affected by tuna fisheries. The Council fishery management plan system, in conjunction with continued U.S. participation in the International Commission for the Conservation of Tunas, and other international tuna management bodies, appears to be the best hope for the long-term conservation of tuna.

Conclusion

Much of the debate on FCMA issues for the past 13 years has ignored conservation of fish stocks and the habitats on which they depend. The 1989 reauthorization debate must break this tradition if we are to make progress in addressing the keystone issues of habitat degradation and overharvest confronting the Nation's FCMA-managed fisheries. Perhaps the most compelling illustration of

this urgency comes with the dramatic declines in the New England groundfish fishery, a fishery as old as the nation itself. It is against the backdrop of this example that the NWF urges Congress to give our recommendations full consideration.

Thank you, Mr. Chairman, for the opportunity to appear before the Subcommittee today to provide these comments.

Resolution No. 7

HABITAT AMENDMENTS TO THE
FISHERY CONSERVATION AND MANAGEMENT ACT

WHEREAS, the protection and enhancement of habitat is essential to sustain productivity of marine and anadromous fishery resources; and

WHEREAS, the Fishery Conservation and Management Act (FCMA) does not provide Federal fishery management councils responsibility for addressing habitat considerations in fishery management plans; and

WHEREAS, provisions of federally-adopted fishery management plans normally need not be considered in the development or permit-granting activities of Federal agencies affecting fisheries habitat, even if such activities adversely affect Federal management of fisheries;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual meeting assembled March 14-17, 1985, in Arlington, Virginia, hereby supports amending the FCMA to require fishery management councils to address habitat needs for production of a fishery and its food base in fishery management plans; and

BE IT FURTHER RESOLVED that FCMA be amended to require all Federal agencies to mitigate the effects of their activities in habitat identified as important to federally-managed fisheries where such activities would adversely affect production of the fishery or its food base.

Statement Of The
National Fisheries Institute
Before The
Subcommittee on Fisheries and Wildlife
Conservation and the Environment
On The
Magnuson Fishery Conservation and Management Act
Reauthorization --- H.R. 2061
May 2, 1989

Thank you for this opportunity to testify on the reauthorization of the Magnuson Fishery Conservation and Management Act. My name is Richard E. Gutting, Jr. and I am Vice President for Government Relations of the National Fisheries Institute.

The Institute is the largest association representing the U.S. fish and seafood industry. Since it was founded in 1945 the Institute has participated in the development of national fishery legislation and has testified many times on the Act and its implementation.

Fundamentally, the Act has been good for the United States commercial fishing industry. Catches and earnings increased immediately as the foreign fleets were replaced. A spirit of optimism and a willingness to invest and develop fisheries pervaded our industry. This is what we sought in supporting the Act and we thank you again Mr. Chairman for all that you have done in making this happen.

The Act has been under continuous scrutiny since its passage in 1976 and has spawned numerous studies,

investigations, oversight hearings, and professional commentary. Over the years various deficiencies and improvements have been debated---often with great emotion. While the Act has been amended many times, its basic structure remains intact. No one really likes the Act's complexity, but no one can agree to anything else.

The presence of massive foreign fleets off our coasts initially prompted passage of the Act. Most of the early amendments dealt with foreign fishing and the replacement of foreign fleets with U.S. vessels and shore-based plants. The mechanisms in the Act which were designed by Congress worked well, and today the foreign fleets are almost gone. The challenges we face today, however, have to do with rebuilding and conserving stocks, avoiding waste, resolving user conflicts, conserving resources outside U.S. waters, conserving habitats, and making do with tight federal budgets. The spirit of optimism I mentioned earlier is turning to one of caution and frustration.

It is not clear whether either the sources of trouble, or their solutions, lie in the language of the Act, the way it is implemented, or elsewhere. We suspect, however, that better implementation and enforcement would go along way towards resolving most issues.

We are pleased that the Subcommittee will be conducting field hearings. A lot is going on around the country which should be examined. Much also has happened in the management of fisheries in other countries. Perhaps we in the United States can learn from foreign experiences as well. In this regard we

recommend that the Subcommittee investigate the successes and failures in Canada, New Zealand, Iceland, and elsewhere where major changes have been made.

Two weeks ago our Board of Directors voted to support several changes to the Act. You will be hearing more about these from other commercial fishing groups. Instead of dwelling on them, therefore, we would like to bring to your attention our basic concerns over what is happening under the Act.

First, several important stocks are at very low and unstable levels of production despite years of regulation under the Act. The New England groundfish fishery is the most frequently cited example. Other fisheries are depressed, however, and the regulation of them under the Act continues to look like after-the-fact reaction, rather than proactive planning. Even the mammoth groundfish resources off Alaska could get into trouble in the future now that the U.S. fleet is growing rapidly and the foreign-catch reserves no longer exist. So, despite the Act's purposes and standards, the goal of maintaining and rebuilding stocks remains elusive in some fisheries.

Second, the efficiency of some commercial fleets is declining under the Act, despite significant advances in technology and new electronics. Catch-per-unit-of-effort has always had its ups and downs, but the long-term trend in many fleets is downward as more and larger vessels chase fewer fish. The Act is not changing this.

Third, consumers must pay significantly more for fish today than they did ten years ago. Seafood prices are rising faster

(an average of 7.68 percent each year for the past five years) than for all meat products (an average of 1.38 percent). These increases have occurred despite rising imports. Additional U.S. production would help reduce pressure on consumer prices.

Fourth, the displacement of distant-water fleets, and the rapid buildup of fishing power in the U.S. and elsewhere, threaten production from areas beyond our 200-mile zone. Despite the Act's purpose of encouraging international cooperation, it has not been successful in promoting effective international management of shared resources. This challenge is becoming more urgent as U.S. fleets expand seaward, which they are doing on all coasts, and foreign fleets put more and more pressure on the stocks.

The suggestions of some people that the U.S. take unilateral action with regard to international resources would move the U.S. in precisely the wrong direction. It is sadly ironic, for example, that many self-proclaimed "conservationists" clamor for council jurisdiction over tuna, rather than support the international mechanisms needed to conserve these shared resources. We suspect that "turf" and allocation agendas are behind these suggestions rather than a genuine concern for conservation. The Institute is opposed to this idea and believes more emphasis needs to be placed on managing shared fisheries through international cooperation.

The interception of U.S. salmon in the North Pacific is also of immediate concern. In this instance the Congress asserted jurisdiction in the Act but federal officials seem unwilling to

enforce this jurisdiction against the foreign fleets which are threatening our harvests. What good is jurisdiction if it isn't used?

Fifth, the potential presence of foreign factory vessels in bays and harbors continues to be of concern to the processing industry, particularly along the Atlantic coast. As you are aware, Congress addressed this concern several years ago by calling for a state-by-state examination of U.S. processing capacity. Regional considerations are getting lost, however, particularly in fisheries located off the Atlantic coastline. Somehow a fishery-wide perspective needs to be fostered.

Sixth, fishing grounds and markets are becoming entangled in economic regulation under the Act because of nasty user conflicts. Consumers are losing their access to seafood and working people are being told they can't sell their catch under the Act so that a privileged few can play offshore---not because rules are needed to conserve the stocks.

Special interest groups of recreational fishermen have been organized to use the Act to set aside certain fisheries for their own exclusive use. These groups are arming themselves with lawyers and lobbyists at a cost far beyond the means of ordinary commercial fishermen. While the resulting allocation conflicts are predictable, and were even anticipated by Congress, the Act has failed to ensure equity and balanced decisionmaking, particularly in southern areas of the country.

One result of this imbalance is that some councils have lost sight of the American consumer. In their desire to lock up

resources for a wealthy few, these councils say that no fisherman should be able to sell his catch, and that consumers should not be able to buy fish which was caught legally in Europe and elsewhere around the world. Having staked out this position in one fishery, they are trying to apply it to others, such as swordfish.

The root cause of the problem is the progressive failure of the Secretary of Commerce to appoint council members who are qualified people with a direct stake in the fisheries being managed under the Act. We wonder, for example, why only one shrimper is on the Gulf of Mexico council given the number of shrimpers being regulated, and the enormous significance of this fishery. The original idea of involving those commercial fishermen who are being regulated under the Act in the council process is breaking down---and it needs to be fixed.

Seventh, consumers are beginning to ask fishery managers whether the fish being produced under the Act are safe to eat, yet the Act provides no clear mechanism to address these concerns. Government officials, for example, have seized products after they were harvested because they contain trace amounts of chemicals. Rather than merely react after the fact and destroy products as they do now, officials should monitor commercial production, not to seize products, but to determine whether a particular fishery is producing fish above safety standards. Fishery managers and others then should take corrective action to insure that unsafe products are not harvested.

Consumer concerns about food safety are linked to environmental concerns and will continue to impact our industry until the degradation of the marine environment is addressed. In this regard the Act does not contain regulatory mechanisms to protect the fish from anyone other than fishermen. It does, however, allow councils to comment on activities that impact habitats. Our impression is that this aspect of the Act is not being fully implemented and that habitats continue to be degraded.

Eighth, taxpayers are spending significantly more to manage fisheries under the Act than they did a few years ago. Implementing the Act in 1981, for example, cost taxpayers \$41.85 for every ton of food produced from the U.S. zone, versus \$66.66 per ton in 1988---this is a 22 percent increase when adjusted for inflation. The Act speaks of optimum yield with a particular reference to food production. Yet, from a food-production standpoint, the management system under the Act is giving taxpayers a poorer and poorer return on investment.

The members of the Institute also share the concern expressed by others that no one seems to be responsible, either for producing results under the Act, or for accounting for the hundreds of millions of dollars which have been spent in implementing it since 1976.

The allocation of funding and people to implement the Act remains a mystery. The budgetary linkage between science and management activities under the Act is non-existent. The process of allocating resources among geographic areas appears to have no

rules or standards. Those regions with the highest volume or value of production, or the most fishermen being regulated, do not get a proportionate share of funding. Some of the Councils which are least productive get relatively more funding and have some of the highest paid members, while others with the most responsibilities get shortchanged.

There is a high degree of frustration and sense of urgency within the commercial industry along each coast---except the frustrations and needs differ. Indeed, the particular mix of issues, and their relative priority, vary dramatically from region to region. Fashioning uniform, nationwide solutions under these circumstances is difficult and may not be desirable. For this reason, the Institute recommends that solutions be considered which build upon the regional diversity which has been recognized from the beginning under the Act.

Finding these solutions would produce significant benefits. The Institute recently completed a comprehensive economic assessment of commercial production. This analysis suggests, for example, that if the groundfish resources in New England could somehow be rebuilt, and landings increased by 100 percent, the resulting economic activity each year would exceed \$257 million at the retail level with a total economic impact of \$573 million. These numbers are worth striving for.

Thank you again for the opportunity to testify. The Institute strongly supports reauthorization of the Act and looks forward to working with the Subcommittee further to improve it.

STATEMENT OF BENJAMIN T. HARDESTY
FOR
THE SPORT FISHING INSTITUTE
AND
THE AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION
ON
H.R. 2061, A BILL TO REAUTHORIZE THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Presented to
The Subcommittee on Fisheries and Wildlife
Conservation and the Environment
May 2, 1989

Mr. Chairman, I am Benjamin T. Hardesty, President of Dunham's Sports Outfitters, Inc. headquartered in Columbia, South Carolina. I represent the Sport Fishing Institute and the American Fishing Tackle Manufacturers Association. These industry associations represent the manufacturers and distributors of goods and services used by the recreational fishing community.

Mr. Chairman, my personal credentials are that for thirty years I was a member of the sport fishing industry as a manufacturer of recreational fishing equipment and am now a retailer of fishing equipment in Columbia, South Carolina. I also have considerable personal experience with the Fishery Management Council system, having served as a charter member of the South Atlantic Fishery Management Council from its inception in 1976 to 1981, and chaired that Council in 1979.

Mr. Chairman, the Magnuson Fishery Conservation and Management Act (MFCMA) created a management system responsible for the conservation and management of common property living marine fishery resources out to 200 miles from our shores. These resources are of vital importance to the growth and prosperity of the recreational fishing industry. My testimony addresses this relationship and offers suggestions on improving the MFCMA for the ultimate benefit of our nation's marine fisheries.

INTRODUCTION

For almost 30 years, surveys conducted by the Gallup Poll have reflected that fishing consistently ranked among the top three preferred recreational activities in the country.

According to the 1988 Gallup Poll sport fishing was the second most popular recreational activity among American adults; swimming was first, and bicycling third. Approximately 29 percent of American adults participated in recreational fishing in 1988. Among men, fishing ranked as the favorite recreational activity, involving the active participation of 41 percent of all adult men at some time during the year.

Focusing on marine waters, based upon information from the latest National survey of fishing participation (1985), people 12 years of age and older spent approximately 172.6 million angler days on the nation's marine waters. That is nearly three times as many marine angling days as were taken by the same age group in 1955 (58.6 million).

Recreational demands for renewable marine fishery resources are expected to continue to grow in the future. The Sport Fishing Institute has reviewed marine angler activity in each coastal state by age cohorts and applied 1985 angling avidity rates to projected population growth figures. The projected increases in marine angling demand indicate that by the year 2025, coastal states will be called upon to support over 211 million days of marine fishing, or 40 percent more than in 1985.

This anticipated growth in angler demand was associated with the increase in the U.S. population and the projected movement of the United States' population to the coastal zone. It is expected that by 1990, 75 percent of the United States' population will live within the nation's coastal zone. Actually, angler avidity could increase in the future. Americans are

increasing their consumption of seafood -- up from 10.9 pounds per capita in 1966 to 15.4 pounds in 1987. Expectations are that this trend will continue, even accelerate. Finally, fish for the American table has become a luxury commodity, with prices commonly exceeding those for beef and other meats. Seafood consumers will become increasingly more inclined to harvest their own table fare and capture the associated recreational benefits in the process.

Even now, sport fishermen harvest an enormous quantity of fish for food. The National Marine Fisheries Service estimated a marine sport catch of 717 million pounds in 1985, which accounted for approximately 30 percent of the total (recreational and commercial) U.S. marine finfish harvest that was used for food. Marine recreational anglers make a significant contribution to the economy of the nation. The total economic impact (including multiplier effects) of marine recreational fishing in 1985 was \$13.6 billion. A total of 285,724 jobs were generated with wages and salaries of \$3.5 billion.

CONSERVATION EMPHASIS

Mr. Chairman, the goods provided by the diverse assortment of companies that constitute the sport fishing industry rely upon a wide variety of factors to market products for the fishing public. The one single factor that every one of these firms and their employees must have to stay in business and to stay employed is a healthy and attractive fishery resource. If recreational anglers consistently fail to locate attractive fishing opportunities, they will not continue to participate in

fishing. Unfortunately, most marine fish stocks of great importance to the recreational fishing industry have declined, and continue to decrease in abundance.

A recent compilation from NOAA's Assistant Administrator for Fisheries ("State of the Fisheries") provides damning evidence that many stocks of essential importance to the recreational fishing industry continue to be overexploited. The summary included in this category such species as groundfish and flounders in the Northeast; snapper-grouper, red drum, reef fish and mackerels in the Southeast and Gulf; and certain stocks of salmon in the Pacific Northwest.

The 1986 introspective NOAA Fishery Management Study, conducted by a panel convened by then NOAA Administrator Dr. Anthony J. Calio (subsequently referred to as the Study), concluded that stocks should be maintained at some level above that which protects the minimum spawning stock from recruitment overfishing. In other words, the Study sought a "conservation standard" so that stocks would not be exploited to the margin of overfishing.

The recreational fishing industry is fundamentally concerned with the deficiencies of the management system under the Magnuson Act which in so many cases has failed to provide for wise resource conservation and effective management, and instead, as reflected in the "State of the Fisheries" document, has allowed continuing exploitation toward growth and recruitment failure.

The Study reflected a number of deficiencies of the Magnuson Act management process which continue to allow overfishing of some stocks. For example, the varying interpretations of optimum

yield (O.Y.) permits "allocation considerations to override conservation responsibilities." To support economic needs, overcapitalized commercial fisheries in some instances have pressured the Councils to raise the optimum yield harvest above sustainable yields. This practice allows more participants to extract some level of financial return from the fisheries, but leads to overfishing and decreases the total return from the fisheries.

The recreational fishing industry shares the concern that the concept of O.Y. as applied by the Councils, has allowed harvests above the level of maximum sustainable yield (M.S.Y.), and notes that the Study concluded that the O.Y. modifier "has become the rule." This pressure toward overfishing will worsen as domestic fisheries become fully utilized. To effectively terminate the continued overexploitation of the public's fisheries assets the Study proposed to separate conservation decisions from the allocation process. This functional split seems on balance to be the wisest management for marine fisheries.

The Nation's common property marine fish stocks will be better served having an independent scientific body required to establish a target quota based on the "best scientific information available." It is important to note that a cap on harvest at the biological harvest limit would cause a dramatic increase in the intensity of political infighting at the Council level. The Councils would have to make tougher decisions on who gets how many fish and could not simply increase harvest to avoid

tough choices. However, we have much of the economic and social analyses tools in hand to make such decision.

The long term best interests of the recreational fishing industry, which depend entirely on healthy and abundant common property fish stocks, mandates that the long term health of the resource is the key objective. Resource conservation must be kept independent of user-oriented allocation decisions.

We support the NMFS's proposed strengthening guidelines to the Act's national standards. The new guidelines are designed to enhance stock conservation objectives. Failing to accommodate an enhanced conservation principle by strengthening the National Standard guidelines, we find ourselves in essential support of legislative modification of the Section 301 national standards. Such modifications should specify the structural separation of conservation and allocation aspects of management.

As one means of reducing the overexploitation pressures on limited marine fisheries, we do support with others, including the American Fisheries Society (Harville Report) and the NOAA Study, a recommendation that the Councils be encouraged to consider the use of limited entry as a management tool. Limited entry is being considered with increasing frequency by some Councils. This is a management option which should not be statutorily inhibited in marine fisheries or any other natural resource management regime and should be encouraged. Limited entry has been used historically in natural resource conservation, just one example being big game management throughout the country.

MARINE HABITAT

Changes in the quantity and quality of habitat result in the decrease or relocation of fish stocks. Wetland habitat supports the preponderance of fish stocks of importance to the recreational fisheries community. As noted earlier, the U.S. population is moving to the coastal zone. The National average loss of wetland habitat has been placed at 300,000 - 500,000 acres per year. The loss and degradation of habitat translates into fewer fish for fishermen to catch.

We support examination of ways to further strengthen habitat conservation considerations in the FMP process. An expanded NMFS research initiative related to fishery habitat protection to assist Council deliberations is a requisite of improved management. Better data on habitat conditions will materially assist decision makers with projecting future health of many key species.

HIGHLY MIGRATORY SPECIES

The statutory exclusion of management authority over highly migratory species should be eliminated. Such an action would permit U.S. policies to conform to the policy of other fishing nations and allow the U.S. management of highly migratory species within the U.S. exclusive economic zone.

RESEARCH

Substantially more information must be collected to accurately reflect the commercial and recreational harvest of stocks managed under Council FMPs. The fishery management Councils are seriously handicapped in obtaining factual and

meaningful data on the recreational catch. The main source of recreational effort and catch data is refined from the yearly Marine Recreational Statistics Survey as conducted by the National Marine Fisheries Service. This Recreational Survey is used by the Councils to achieve FMP objectives for which the survey was not originally designed. In order for recreational fishing interests to receive their fair share of marine fisheries stock allocations, it is imperative that NMFS be directed and sufficiently funded to redesign and implement a recreational, statistical data system that provides the fishery management Councils with timely and factual recreational use and harvest data.

Long-term research on fish stocks and habitat relationships must also be enhanced to improve the condition of the best available information.

TECHNICAL AMENDMENTS

We support and recommend the following changes to the Act's specifications for Council appointments and service:

1. Limit of not more than two consecutive terms of appointment for obligatory and at-large Council members.
2. No state shall have more than one state employee on any one of the Councils.
3. It is a conflict of interest that the designated NMFS member on each of the Councils should be a voting member. We recommend that the designated NMFS member be non-voting.

SUMMARY

The recreational fishing industry is a growing, diverse business community that depends, to an increasing degree, upon the Nation's common property marine fisheries. The MFCMA system must serve to promote wise conservation, development and use of the natural resources under its direct stewardship, and to obtain, for the public, reasonable socio-economic returns on these public natural resource assets.

This sustained delivery of public returns mandates development of broad national policy that emphasizes public resource conservation and long-term maintenance of these public assets rather than emphasis on short-term exploitive use.

Enhanced protection of highly migratory species under the Act, improved data collection including harvest reporting, and continued strengthening of habitat-related considerations in FMP development, are all recommended actions that will improve the fishery management process undertaken by the Magnuson Fishery Conservation and Management Act.

Written Testimony for Hearings on
H.R. 2061: A Bill to Reauthorize
the Magnuson Fishery Conservation
Management Act of 1976

Prepared and Submitted to the
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment by the
Independent Shellfishing
Association

May 12, 1989

I. Introduction

These comments are being submitted by the Independent Shellfishing Association ("ISA"), a diverse group of individuals and corporations involved in the Atlantic surf clam and ocean quahog fishery. ISA was formed for the purpose of responding collectively to certain changes to the current Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery ("the FMP") that have been proposed by the Mid-Atlantic Fishery Management Council ("the Council"). ISA believes that the Council's actions in this matter have raised certain questions about the entire management council system.

Specifically, the Council is attempting to force onto the commercial fishing industry a radical regulatory scheme without proper justification and with total disregard for industry's views. While ultimately the National Ocean and Atmospheric Administration ("NOAA") will have to review and rule on any Council recommendation, the Council's attitude and the procedures it has followed are contrary to congressional intent. We are hopeful that NOAA will stop the Council when the agency realizes that the proposed regulatory change involves the conversion of a national resource into private property, an action which the Magnuson Fishery Conservation Management Act (the "Magnuson Act") never contemplated. Nevertheless, Congress should be aware that the Council system has some serious flaws which should be aired.

II. Background

At present, the Atlantic surf clam and ocean quahog fishery operates under Amendment #7 to the original FMP. This system has a number of basic components: (1) there is an aggregate annual catch quota for both surf clams and quahogs which may not be exceeded by the entire commercial fishing industry in any given year; (2) the annual quota is the only restriction on quahog fishermen, since quahogs are plentiful and the resource is not in danger of depletion; 1/ (3) a moratorium on surf clam fishing permits is in place, due to historical overfishing problems, and therefore the number of vessels participating in the surf clam fishery may not increase from year to year; and (4) to allow all fishermen an equal opportunity to catch surf clams while staying within aggregate quota levels, each permitted vessel may fish only 36 hours per fiscal quarter. Vessels may catch as many surf clams as they are able within this time-limited system.

1/ The Council has never maintained that there is a quahog shortage. In fact, until this year the annual quota for ocean quahogs had risen steadily, and recently had increased by approximately 1,500,000 bushels. This is clear recognition by NOAA that there is no depletion of the stock. Moreover, despite a totally open and unregulated fishery, the industry has not come close to catching the annual quahog quota in the past few years.

The present system has worked very well in managing the resource. Ocean quahogs are plentiful, and surf clam stocks, which were decimated ten years ago due to overfishing, have been completely replenished. ^{2/} By NOAA's own admission, the surf clam and ocean quahog FMP is one of the most successful management plans in existence.

Despite this success, a few problems admittedly remain in the industry. First, the surf clam fishery is somewhat overcapitalized. Second, the National Marine Fisheries Service ("NMFS") must work hard to enforce the existing regulations. Nevertheless, the present scheme has conserved the fishery and the enforcement problems have not been insurmountable.

The Council, notwithstanding the success of Amendment #7, has decided that changes must be made and that Amendment #8 is the answer. The enclosed public hearing draft of Amendment #8 (Attachment 1), dated December 28, 1988, included the following changes to the regulatory scheme: (1) a per-vessel "allocation" of both surf clams and quahogs would be established, which would give each permitted vessel ownership

^{2/} According to the Council, total surf clam landings have increased to 79 million pounds of shucked meats in 1986 from a low of 35 million in 1979, evidencing a replenishment of the resource stock. The Council has stated that present stocks are adequate to support the fishery for the next ten years. Mid-Atlantic Fishery Management Council, Amendment #8 Hearing Draft at 18-19 (December 1988).

rights to a specified percentage of the annual quota; 1/ (2) each vessel's allocation (i.e., the percentage of the resource each vessel would own) would be based on a formula to be determined at a later date after further discussion of several alternatives; (3) surf clam allocations would be transferable on a limited basis for the first three years and transferable on an unrestricted basis thereafter; (4) quahog allocations would be transferable on an unrestricted basis immediately; (5) the time-base limitation system presently in existence for surf clams would be removed; and (6) no shucking of either quahogs or surf clams would be permitted at sea.

As discussed below, industry has been united in its vehement opposition to Amendment #8 since the plan was initially proposed in April 1988. Industry repeatedly has demonstrated that Amendment #8 creates many more problems than it solves, 4/ and that it results in grossly inequitable

1/ For example, if a particular vessel's "allocation" equaled 10% of the annual quahog quota, that vessel would be entitled to catch 10% of the annual quota each year.

4/ For example, the Council's "enforcement cost" rationale for Amendment #8 is completely groundless. Although the current time-based limitation system may be difficult to enforce, the "cage tag" system proposed by the Council would be equally expensive. More importantly, Amendment #8 would create an elaborate regulatory system for quahogs where none exists presently. Consequently, total regulatory enforcement costs in

[Footnote continued]

distributions of the resource. Despite this fact, and despite the fact that there are no conservation concerns addressed by the plan, 5/ the Council has pushed Amendment #8 through its procedural process toward eventual adoption. A vote to either reject the Amendment or approve it and send it to NOAA for final review is scheduled to take place next month. However, based on its previous actions, we can only assume that the Council will continue to support the plan and that the final vote will be a mere formality. In our view, this is runaway rulemaking by a body that has been totally unresponsive to those it is supposed to represent. This calls into question the Council's entire management process, and highlights the need for greater congressional oversight of the fishery management process.

4/ [Footnote continued]

this fishery will increase dramatically if Amendment #8 is enacted. This is merely one of many examples of how the proposed plan fails to achieve its stated objectives.

5/ As noted previously, there are no conservation concerns in either the surf clam fishery or the quahog fishery. Moreover, the proposed Amendment does not reduce aggregate annual quotas. Thus, not even the most ardent supporters of Amendment #8 could claim that there is a conservation rationale for the proposed regulatory changes.

III. Procedural History of Amendment #8

The Magnuson Act, 16 U.S.C. § 1801 et seq., created eight regional fishery management councils, including the Mid-Atlantic Council. These bodies were authorized to design and amend management plans with respect to each fishery in their geographic range. The Act explicitly and implicitly requires councils to involve industry in the formation of management plans. For example, the Act states that each council "shall establish such . . . advisory panels as are necessary and appropriate to assist it in carrying out its functions" 6/ The Act also requires public hearings "to allow all interested persons an opportunity to be heard in the development of fishery management plans," and requires that all plans which restrict access to a fishery must take into account "historical fishing practices" as well as "present participation in the fishery." 7/ In addition, relevant provisions of the Code of Federal Regulations confirm that

6/ 16 U.S.C. § 1852(g)(2).

7/ 16 U.S.C. §§ 1852(h)(3) and 1853(b)(6).

councils should take into account the views and recommendations of an industry advisory panel when formulating an FMP. ^{8/}

In this instance, the Council has stated that it has listened to industry's concerns throughout the development of Amendment #8 and that "[t]here have been many meetings of the [industry] advisory panel . . . to attempt to develop a solution to the problem." ^{9/} This simply is untrue. Although the Council long ago established an industry advisory panel (the "Industry Panel"), the views of industry in general, and of the Industry Panel in particular, consistently have been ignored throughout the process of developing Amendment #8. Indeed, the response of the Council, and of the Council's professional staff, to the efforts of the Industry Panel in this matter has consisted of little more than an effort first to abolish it, and then to undermine its ability to speak on behalf of the industry.

^{8/} See 50 C.F.R. § 601.22(e) (authorizing the Council to establish advisory panels for the purpose of obtaining the advice and counsel of "the people most affected by . . . Council matters of fishery management policy" The regulations also state that advisory panels shall be composed of those who are actually engaged in the harvest, processing or consumption of the resource being managed).

^{9/} Mid-Atlantic Fishery Management Council, Amendment #8 Hearing Draft (Attachment 1) at 12.

The continuing effort to prevent the Industry Panel from participating in the development of Amendment #8 apparently was motivated by the Council staff's recognition that the Panel, with virtual unanimity, opposed both the concept of a resource allocation and the concept of unlimited consolidation of surf clam permits. 10/ The Industry Panel made its preferences clear as early as the winter of 1987, at a Council meeting in Atlantic City, when it reported to the Council its recommendation for continuation of the present time based regulatory system for surf clams, in conjunction with a limited permit consolidation plan to address the industry's overcapitalization concerns. 11/

Although the Council listened politely to the Industry Panel's recommendations, no further input was requested. It soon became apparent that the Industry Panel's recommendation was at odds with the Council Staff's view that an allocation system with unlimited consolidation would best solve the industry's economic problems.

10/ Both of these concepts lie at the heart of Amendment #8.

11/ Limited consolidation of permits would allow vessel owners to combine two surf vessel clam permits onto a single vessel. Vessels with combined permits would then be allowed to take twice as many surf clam trips as a single permit vessel. This scheme would enable boat owners to retire half of their surf clam vessels, thus reducing overhead, improving efficiency, and greatly reducing overcapitalization.

The ability of the Industry Panel to provide further advice and influence effectively was laid to rest in the fall of 1987, when the Council Chairman announced his intention to abolish the Industry Panel because, in his view, its services were no longer needed. In response, the Industry Panel Chairman objected in writing to the proposed abolition. The Council never again requested a meeting of the Industry Panel in connection with the development of Amendment #8, and has not sought its input at any time since the announced intention to abolish the Panel in the fall of 1987.

Nevertheless, although in a less organized fashion, industry continued to express its views to the Council throughout 1987 and early 1988. In the spring of 1988, at a Council meeting in Hampton, Virginia, the Council's staff attempted to induce the Council to adopt a particular allocation formula as the "preferred alternative" for Amendment #8. Industry participants attended that meeting in large numbers and spoke against this proposal with a virtually unanimous voice. As a result, the Council declined to endorse the proposed allocation. Industry's hope that its views finally were being considered, however, was short-lived.

After the Hampton meeting, the Industry Panel attempted to help formulate a modification of the current regulation scheme which would both address the Council's concerns and receive industry support. An open meeting of the

Industry Panel was held in Philadelphia in June 1988, to which all industry participants were invited. The Chairman of the Council's Surf Clam Committee was invited to the meeting, and notice of the meeting also was provided to the Chairman of the Council and to the Executive Director of the Council's staff.

Incredibly, the Executive Director of the Council's staff, Mr. John Bryson, rejected this attempt by industry to work with the Council to reach a consensus on this issue. Mr. Bryson wrote to the Industry Panel and advised that the "proposed meeting was not requested nor cleared through the Chairman or Executive Director as required," and therefore a report of the meeting would not be received by the Council. ^{12/} The Industry Panel nevertheless conducted its meeting; only one Council member was present and no representatives from the Council's staff attended. Approximately 25 to 30 individuals, representing the vast majority of vessels in the industry, attended the meeting and voted to oppose allocation and to urge the Council to develop instead a limited license consolidation plan to address overcapitalization concerns.

^{12/} A copy of the letter from Mr. Bryson to the Industry Panel is enclosed as Attachment 2.

The Council's next meeting was in July 1988. At that meeting, the Council's staff again presented to the Council a draft of its proposed Amendment #8. To industry's surprise, the proposal virtually was identical to the plan rejected by the Council in the wake of industry opposition the previous April. The Council's staff simply had disregarded the Council's prior vote and recycled the identical plan with minor cosmetic changes. Industry again spoke out vehemently against the proposal, but the Council ignored these remarks and voted to send the staff's proposal to public hearing.

The degree to which the Council ignored industry's views in the development of Amendment #8, and in the decision to send the proposed Amendment to public hearing, was reflected in a letter to the Council's Chairman from Mr. Pete Jensen, Council member and Chairman of the Council's Surf Clam Committee. ^{13/} This letter, which was read into the record at the Council's July 1988 meeting, acknowledged that industry did not support proposed Amendment #8, and that "an act of bad faith [had been committed] by running rough-shod over the industry['s] views." Mr. Jensen also acknowledged that the Industry Panel had been ignored and stated that "[t]he very

^{13/} A copy of the letter from Mr. Jensen to the Council's Chairman is enclosed as Attachment 3.

purpose (and charge) of the [industry] advisory panel was to work closely with the committee and the Council to develop Amendment #8." Mr. Jensen expressed particular irritation with the Council staff's Executive Director, Mr. Bryson, for "vigorously defending the staff position . . . and being unwilling to acknowledge industry views." In closing, Mr. Jensen noted that "[i]f we adopt this alternative in the face of the industry opposition we are abandoning the very tenants of the Council and the democratic system." Despite Mr. Jensen's letter, the Council approved the staff's proposal and Mr. Jensen has since been removed as Chairman of the Council's Surf Clam Committee.

In February and March 1989, the Council held four public hearings on proposed Amendment #8. The vast majority of the industry spoke either directly or through representatives at these hearings. Of the approximate 40 speakers, not one expressed support for a quahog allocation system and not one expressed support for the proposed prohibition against shucking at sea, two of the three major components of Amendment #8. Two speakers expressed qualified support for the third major component, a surf clam allocation; the remaining speakers all were opposed to Amendment #8 in its entirety. Even these numbers do not tell the entire story, since many of the participants who spoke against the proposed Amendment represented a large number of industry participants. For

example, ISA and a sister group, the United Shellfishermen's Association, alone represent approximately two-thirds of the industry, and representatives from both organizations spoke in total opposition to the proposed Amendment on behalf of their memberships. In addition, written comments submitted by industry participants for inclusion in the public hearing record expressed opposition to the Amendment in the same proportion as the oral comments. 14/

To industry's shock and dismay, only one member of the Council, Mr. Lee Anderson, was present at three of the four public hearings. At the fourth, two additional Council members, out of a total of 19 voting members, attended. Nevertheless, ISA was hopeful that after such one-sided public hearings, the Council at last would rethink its plans to force an allocation system down the throats of an unwilling industry. However, at the Council's April 1989 meeting in Norfolk, Virginia, Mr. Anderson announced the intention of the Council's Surf Clam Committee to present a revised plan for Council approval by June, thus rejecting the possibility of scrapping Amendment #8 and working with industry to develop a

14/ A copy of the ISA's written and oral comments are enclosed as Attachment 4. These comments are representative of the views of the vast majority of active industry participants, as presented to the Council at public hearing.

viable alternative. Although some revision in the Amendment has been promised, the clear implication of Mr. Anderson's remarks is that the "revised" plan will recommend an allocation system with unlimited license consolidation, and that this proposal merely will fine tune the allocation formulas presented in the previous draft. Once again, the voice of industry appears to have been ignored.

It is difficult to comprehend completely the impact of proposed Amendment #8 on independent fishermen and other industry participants without a full understanding of the proposal and its intricacies. Unfortunately, it would require a great deal of explanation to describe in detail the plan and its effects, and this is an inappropriate forum for an extended discussion of any particular regulatory scheme. For the purposes of this hearing, however, it is sufficient to understand that the proposed Amendment could leave the entire surf clam resource in the hands of very few large fleet owners, and probably would put all small independent surf clam and quahog fishermen out of business. To fishermen who have been working in the industry for 20 years or more, and who instantly would be bankrupt if the proposed Amendment is adopted, the Council's attitude in this matter has been a Kafkaesque nightmare. This kind of runaway rulemaking suggests that the Council process does not guarantee appropriate input from

industry and that, at least in this instance, much more congressional oversight is needed.

IV. Privatization of Natural Resources

One of the most disturbing aspects of Amendment #8, and an aspect that should be of great concern to Congress, is that the Amendment proposes to privatize the U.S. surf clam and ocean quahog resource, and to give full ownership rights in this resource to individuals and corporations. These private ownership interests would be received free of cost, with no payment flowing to the government or taxpayers. The Council believes, incorrectly, that the Magnuson Act's use of word "allocation" authorizes the Council to "give away" a natural resource to private fishermen in this manner.

In a number of instances, the Magnuson Act and its regulations refer to the possibility of implementing "allocations" as a means of managing fisheries. The term "allocation" is defined in the relevant regulations as "a direct and deliberate distribution of the opportunity to participate in the fishery. . . ." ^{15/} This definition is incorporated into the Magnuson Act, which authorizes the

^{15/} 50 C.F.R. § 602.14(c)(1) (emphasis added).

allocation of "fishing privileges" under certain specified conditions. 16/

As this language demonstrates, the term "allocation," as used in the Magnuson Act and its regulations, refers only to the distribution of fishing privileges, and not to the distribution of ownership rights in the resource itself. Thus, throughout the Magnuson Act's regulations, the term "privileges" is utilized in every instance in which the term "allocation" is employed. For example, 50 C.F.R. § 602.14(a) establishes certain standards which must be met "if it becomes necessary to allocate fishing privileges." Section 602.14(c) describes instances in which a "FMP may contain certain management measures that allocate fishing privileges. . . ." Section 602.14(c)(3) requires that an allocation of fishing privileges must be fair and equitable. . . ." Section 602.14(c)(3)(i) requires that "an allocation of fishing privileges should be rationally connected with the achievement of [optimal yield]. . . ." And Section 602.15(c) describes a system for limiting access as "a type of allocation of fishing privileges. . . ."

In short, the drafters of the Magnuson Act authorized allocations of privileges or opportunities to participate in

16/ 16 U.S.C. § 1851(a)(4).

the fishery. Nowhere does the Magnuson Act, or its interpreting regulations, suggest that the term "allocation" was intended to refer to the direct distribution of the resource itself among industry participants. This is demonstrated further in Appendix A to Subpart B of the regulations. This Appendix provides numerous examples of both "indirect" and "direct" allocation schemes that are permissible under the regulations, yet none of the examples involve anything more than a limitation on fishing privileges.

The Mid-Atlantic Council, however, believes that the Magnuson Act's use of the term "allocation" authorizes the distribution of a natural resource into private hands. Under proposed Amendment #8, each permitted surf clam and quahog vessel would own a permanent, fixed percentage of the aggregate annual quota. Without lifting a finger to catch clams or paying a cent to the government, a vessel owner would have full ownership rights to his "allocation" of the resource -- he could catch it, sell it, or choose to leave it in the ocean.

Congress may wonder why so many fishermen oppose a plan that would provide them, at no cost, with permanent ownership rights in a portion of the resource. Simply put, many fishermen are opposed to the plan because it is anti-competitive and un-American. Once a vessel receives its allocation, no amount of capital expenditure, hard work, or innovation ever would increase the vessel's allocation. The

only way for a fisherman to improve his competitive position would be to purchase additional allocations. Thus, the proposed plan favors wealthy fleet owners and processors, and punishes hard working, non-wealthy independent fishermen. Moreover, the proposed allocation formulas are so arbitrary and inequitable that in many cases a vessel's yearly allocation will be less than it can catch in a single trip. Under the Council's proposed allocation formulas, many fishermen will be unable to catch enough fish to support their capital investments and they will be put out of business immediately.

In addition, the proposed allocation system creates a number of dangerous possibilities for the commercial fishing industry as a whole. Under the proposed plan, a single individual or corporation could monopolize the industry by purchasing all of the surf clam or quahog allocations. 17/ Moreover, this "sole owner" could be any wealthy company such as IBM or any wealthy individual such as Donald Trump -- under Amendment #8, allocation purchasers need not demonstrate any prior participation in the fishery. As a practical matter, the

17/ The Council apparently would rely on seldom enforced antitrust laws to prevent the consolidation of the entire resource into the hands of a single owner. Even if such laws would prevent sole ownership of the resource, clearly a small number of individuals or companies would be able to own or control the entire resource.

"sole owner" also could be a foreign-controlled corporation. Foreign corporations with deep pockets already have purchased American clam processors and have made other inroads into U.S. fisheries. Nothing in the proposed Amendment could prevent an American company from "fronting" for a foreign corporation and purchasing the entire resource. In short, Amendment #8 may have a number of devastating effects on fisherman and on the industry as a whole, many of which have not been anticipated by the Council.

Given the potentially disastrous effects that may result from Council's "allocation" system, it is not surprising to discover that no other American fishery has been regulated by means of a direct distribution of ownership rights in the resource, prior to harvesting, as the Council now proposes in Amendment #8. The drafters of the Magnuson Act surely never contemplated that the term "allocation" would be interpreted in such a manner as to allow this privatization, and Congress now should clarify the statutory language to prevent management councils from giving away public fisheries in this instance or in the future.

V. Conclusion

The Independent Shellfishermen's Association greatly appreciates the opportunity to present written testimony at these hearings. For a large number of reasons, we believe that

Amendment #8 to the Atlantic Surf Clam and Ocean Quahog FMP is illegal, inequitable, and wholly unnecessary to achieve the legitimate goals of the Council. 18/ For the purposes of this hearing, we have focused on two aspects of the controversy -- the degree to which the Mid-Atlantic Council has, inappropriately, ignored industry input, and the fact that the Council is proposing to privatize a natural resource through a tortured interpretation of the Magnuson Act. We respectfully request more strict oversight of the council process in general, and the Mid-Atlantic Council in particular, so that industry will be guaranteed a forum for its views. We also respectfully request that Congress clarify the meaning of "allocation" in the Magnuson Act to prevent attempts by runaway

18/ See comments of ISA (Attachment 4).

councils to give private individuals ownership rights in national, public fisheries.

Respectfully submitted by the
Independent Shellfishing
Association:

Mr. Bill Brunell
Mr. Max Cohen
Mr. R. D. Dempsey
Mr. Donald DeMusz
Mr. Harry Higbee
Mr. Thomas M. Keenan
Mr. Frank Mariner
Mr. Charles McCullough
Mr. Jim Pearson
Mr. Pete Pearson
Mr. Bill Riggins
Mr. Bill Schafler
Mr. Dick Shaw
Mr. Barney Truax
Mr. Martin Truax
Mr. Wilbur Wiseman
Borden Inc.
Gorton's Canned Seafoods
Mid-Atlantic Foods, Inc.
Port Morris Clam Co.
Sea Watch International

9572S/3344o

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

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Vice ChairmanROOM 2115 FEDERAL BUILDING
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302-474-3331John C. Bryson, P. E.
Executive Director

16 June 1988

Thomas T. Alspach, Esq.
Earnest & Cowdrey, P.A.
P.O. Box 1747
Easton, MD 21601

Dear Mr. Alspach:

I have received your notice that the Surf Clam Industry Advisory Panel is to meet June 28, 1988 at the Ramada Inn in Essington, PA.

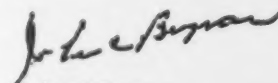
The Surf Clam Advisory Panel was appointed by the Council to assist it in its input with planning efforts, and therefore, meets at the request of the Council.

This proposed meeting was not requested nor cleared through the Chairman or Executive Director as required, therefore, it cannot meet as a Council constituted body, nor will a report of the meeting be received by the Council.

We, of course, have no concern over a meeting of members of industry that you may choose to call together as long as they are not considered to represent the Council.

If you desire a meeting of the Council panel, please follow established procedures to request such a meeting.

Sincerely,


John C. Bryson

JCB/chs

cc: Robert Martin
Pete Jensen

Additional Information was submitted. It is available at the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Annex II, Room 543, Washington, D.C. 20515.

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GREENPEACE

Greenpeace USA • 1436 U Street NW • Washington DC 20009 • Tel (202) 462-1177
 Tlx 89-2359 • Fax (202) 462-4507

May 2, 1989

PROPOSED AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT (MFCMA)

Greenpeace is deeply concerned with the health of our nation's seas and in particular with the exploitation of living marine resources. We have been and are currently involved with a number of issues which pertain to fisheries management, such as the use of driftnets on the high seas and the protection of marine mammals. It is important that developments such as the continued increase in the capacity of U.S. vessels to harvest fisheries resources which may already be fully exploited be immediately addressed at a national level.

As such, we would propose that the following be considered with respect to the reauthorization of the Magnuson Fisheries Conservation and Management Act:

1. Establish a mandatory observer program on select fisheries, to be implemented by the Secretary of Commerce, including those that formerly were required to have observers as a condition to obtain a quota under TALFF (e.g. Bering Sea and Gulf of Alaska groundfish trawl fisheries). Other fisheries where observers should be required include those where insufficient data exists to properly assess condition of stocks, and/or those fisheries where management has been difficult as a result of problems in enforcing regulations. Require public release of tonnages and by-catch data, by time and area.
2. Establish a user fee requirement for funding of observer program, and other management and enforcement purposes. Moneys to be held in dedicated account to ensure direction of funds into the program.
3. Require an environmental representative on each regional fishery management council as a full voting member pursuant to Sec. 2.(b)(5).
4. Establish a maximum drift gillnet length limit requirement of 1 nautical mile (1,000 fathoms) for U.S. vessels operating inside and outside U.S. EEZ.
5. Strengthen habitat provisions in Sec. 302(i) to grant the Councils authority to review the permitting process of any

RECYCLED PAPER

federal or state agency whose activities will, in the view of the council, have a potential negative impact on the habitat of a fisheries resource within its jurisdiction, and to make binding recommendations concerning those activities. Require that the Councils move to assess the impact on fisheries habitat of the various gear types employed in particular fisheries and regulate the use of such types accordingly.

6. Establish limited entry/controlled access provisions to exhort regional councils to develop systems to circumvent overcapacity in fisheries. Make the discretionary provision of 303(b)(6) mandatory in those fisheries where capacity is assessed to be full or excessive with respect to available resources. Direct the Secretary to draw up a set of guidelines for the development and implementation of such systems.
7. Develop National Standards provision to reduce discard catch and waste.
8. Establish a Congressional finding which supports the goal of eliminating high seas driftnet fishing beyond the 200-mile EEZ after 1992, and direct the Secretary of State to develop and negotiate, by that time, a new international North Pacific fisheries organization, which would include, at a minimum, Canada, Japan, the Republic of Korea, The Soviet Union, Taiwan, and the United States.
9. Stipulate non-discretionary amendment to Governing International Fisheries Agreements (GIFAs) to require that the boarding of all foreign fishing vessels on the high seas be allowed as a part of extended jurisdiction over anadromous fish resources.
10. Stipulate non-discretionary amendment to GIFAs that transponders be required on all foreign vessels within the EEZ. Also, as part of GIFAs, stipulate that transponders must be required on board all GIFA-nation foreign vessels fishing within identified salmon habitat zones in international waters.
11. Require that the Secretary of Commerce, through the Secretary of State, act to initiate cooperation with the Government of Canada for the purpose of establishing joint U.S.-Canadian management of shared fish stocks, in particular Georges Bank and Gulf of Maine stocks.
12. Require that the Secretary of Commerce, through the Secretary of State, act to negotiate entry of the United States into the Northwest Atlantic Fisheries Organization (NAFO).

GREENPEACE CONTACTS: Alan Reichman, Seattle (206) 632-4326
 Matthew Gianni, Boston (617) 576-1650
 Anne Dingwall, D.C. (202) 462-1177

LAW OFFICES OF
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April 20, 1989

Hon. Gerry E. Studds
Chairman
Subcommittee on Fisheries and Wildlife Conservation
and the Environment
U.S. House of Representatives
Room 1334
Longworth House Office Bldg.
Washington, D.C. 20515-6230

MAY 1 1989

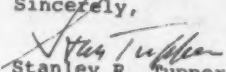
Dear Congressman Studds:

Thank you for your invitation to testify May 8, 1989 at the State House in Boston. I regret that a conflict has arisen and that I will not be able to attend.

I enclose a commentary I wrote for The Boothbay Register, Boothbay Harbor, Maine recently on the commercial fishing industry.

As a former member of the Merchant Marine and Fisheries Committee when in Congress, I have followed your work on behalf of the commercial fisheries with considerable interest and admiration.

Sincerely,


Stanley R. Tupper

C.C. Hon. Joseph E. Brennan

Boothbay Register, Boothbay Harbor,
Maine

Boothbay



Commentary

Fishing: Revival Or Further Decline?

RESTS SINCE 187

WEDNESDAY, APRIL 20, 1969

By STAN TUPPER

The Fishermen's Festival held recently serves to remind all of us of the special relationship the Boothbay Region and the State of Maine have with the sea and those who make their living from it.

As a Boothbay Harbor native, I have always had a keen interest in the commercial fishing industry. While I have never been a fisherman, it has been my privilege to serve as Chairman of the Fisheries Committee of the Maine House of Representatives; as a member of the Merchant Marine & Fisheries Committee of the United States House of Representatives; as Commissioner of Sea & Shore Fisheries for the State of Maine; and as U.S. Commissioner of the International Commission on Northwest Atlantic Fisheries (ICNAF).

I believe it is shameful that so little attention has been given to our domestic fishing industry and that the United States ranks so low among fishing nations of the world. Our government has simply been unwilling to take the steps necessary to preserve this vital food supply and has been satisfied to depend, to a large extent, upon imported fish for domestic consumption.

A growing number of Maine men are now fishing out of Alaska, separated from wives and families for months at a time. There are over a dozen men from this area alone fishing off the Alaskan coast and Bering Sea. Some have been able to retain ownership of their own vessels only by fishing out of Alaska on other vessels.

I have great respect for these Maine fishermen and their families who have the courage to make this difficult adjustment in order to maintain what they have worked so hard to achieve. I am, however, greatly concerned by the circumstances that have forced this upon them.

The reasons for the depressed New England fishing industry are complex. A significant part of the reason is ineffective fisheries management, particularly for groundfish. There seems to be no consensus among fishermen as to how to improve management programs.

Some argue for limited entry, limiting the number of fishermen who can fish in a particular area. Others argue that there needs to be flexibility, and that limited entry would eliminate the opportunity for fishermen to participate in different fisheries at different times of the year.

Whether limited entry would improve fish stocks is debatable, but what is certain is that it would cause serious dislocation in Maine's fishing fleet and shoreside support businesses.

Enforcement of fishing regulations has not been adequate in respect to closed area restrictions and mesh regulations. Most fishermen are law abiding and want regulations enforced rigorously.

The U.S. Coast Guard does not get nearly enough support to effectively enforce regulations at sea; it is obviously undermanned. While the Coast Guard performs very well within its limitations, it needs more ships and manpower. The Department of Commerce cannot maintain existing fisheries enforcement, lacking sufficient personnel to prosecute violations. One result is a great deal of plea bargaining and a sense that fines are just part of the cost of doing business. In Maine U.S. District Court, Justice Carter recently reprimanded the Commerce Department for delays in processing cases. There are only four or five people at NOAA preparing and prosecuting cases for the entire Atlantic coast, and there is only one Administrative Law Judge dealing with marine matters for the entire country!

I have no criticism of existing Coast Guard and Commerce Department personnel. They are

committed to doing the best they can while handicapped by budgetary considerations.

There is an immediate need for our federal government to assist commercial fishermen through bold federal programs. Subsidy has become an unpopular word in recent years, but if we are to preserve this, our oldest industry, we must spend more federal dollars to protect our national interest.

This could take the form of direct subsidies on catches. We do it for tobacco farmers producing a crop that is responsible for 350,000 deaths in the U.S. each year; can't we do it to help those producing a product that provides a healthy, food source for our people?

Certainly, low interest loans for vessels and equipment would help, as well as direct subsidies toward prohibitively high insurance for vessels and crews.

U.S. fishermen are competing with nations that offer attractive, direct and indirect subsidies to their fishermen; this is an unfair national policy and allows unfair competition to continue.

I believe our State Department should enter into new negotiations with Canada to attempt to come to an accommodation to fish in each other's waters under proper controls.

Offshore commercial fishermen could also help themselves through organization of cooperatives.

Finally, there should be an impartial commission of experts, outside of government, to examine all aspects of this problem, including conservation, enforcement, economics and national interest, and to recommend a course for our nation to follow to revitalize our fishery.

Administrations have ignored this industry for many years. As a result, we have witnessed a drastic decline, particularly in the north-west Atlantic. If this is to change, many more voices must be heard in our Nation's Capitol.

TESTIMONY SUBMITTED BY MARY P. TOOMEY, CHAIRMAN OF THE BACK RIVER
COMMITTEE OF WEYMOUTH AND HINGHAM

I. INTRODUCTION

Eighteen years ago Dr. Mary Sears of the Woods Hole Oceanographic Institution asked me to form a committee to protect the Back River Estuary, located between Weymouth and Hingham. One section of the estuary and its surrounding lands had been under federal protection for nearly 100 years, and Dr. Sears wanted to see the land preserved in order to protect the estuary. She explained that an estuary is the nursery for the offshore fisheries and the basis of the marine food chain. Dr. Sears stated that it appeared that little was being done to protect estuaries, and that she feared a crisis in the late 80's. She advised a three-point effort including land acquisition, clean-up of pollution, and a concentrated effort to increase stock. This was in 1971, and I agreed to form a committee.

II. WHAT I FOUND

I found it true that estuaries were largely unprotected, and subject to pollution, exploitation, and pressures of all kinds. Both sewage and drainage were permitted to run into them. It was up to me to spend my own time, effort, and money, if necessary to oppose harmful activities.

Here is a sampling of many problems I encountered over these years:

1. 14 million gallons of sewage overflowing into the estuary during rainy periods. This amount was for one year.
2. A landfill leaching regularly into the estuary. It had been ordered closed and capped, but the action was not taken and still has not been taken! Shellfish beds in this area have to remain closed.
3. A developer who received all necessary local and state permits to move shellfish beds out of the way in order to construct a marina! It took a study done by Dr. Peter Orton of Woods Hole to arm Federal Fish and Wildlife with facts for eventual refusal.
4. A contractor who put fill and rock into the estuary to build a causeway for his business, and regularly parked heavy barges on the shellfish beds, thus smothering the shellfish. The U.S. attorney eventually prosecuted him.

III. AT THE PRESENT TIME I AM FACED WITH THESE PROBLEMS:

1. A developer who has a permit to place 138 housing units and a Pumping Station for sewage adjacent to the estuary and its shellfish beds. The land is largely floodplain and subject to flooding from the abutting V-6 Zone of the river. The tide goes under the land for some distance, and the land to be dug contains hazardous substances. (A group calling itself Friends of Back River has appealed the permit to Superior Court at its own expense.)

Similar building locations on the Cape have cost the state 3500 acres of shellfish beds in the past few years.

2. A French Company which wants to have a Trash-to-Energy Plant on the bank of the estuary and store all the toxic ash on site. Their application to the state has been appealed by another which had to hire an attorney at their own expense.

(I might add that although the estuary was declared an Area of Critical Environmental Concern to the State, and the proposed site abutted the area of Concern, the designation by itself would not preclude such an insult since it carries no regulations.)

3. Pressure from Boating Interests who want to dredge in order to accommodate more moorings for luxury yachts. Estuaries will have wall-to-wall boats at this rate with accompanying oil and gas spills, so dangerous for the fish.

COMMENT:

Estuaries are the nurseries for the offshore fisheries and the basis for our marine food chain. Unless they are stringently protected, there is no point in having a 200 mile limit. They should not be subjected to pressures, and neither should their safety have to depend on volunteers who are expected to supply time, effort, and money necessary to fight the threats.

IV. MY SUGGESTIONS:

1. A commitment by the federal government to move swiftly to protect what is left of our estuaries
2. An immediate educational program using all forms of public media to convey the value of estuaries to the public. A National Geographic Special would be invaluable on Channel 2.
3. No future permits to allow drainage of sewage to enter estuaries.
4. Immediate high priority to eliminate present drainage and overflowing sewage
5. No location of any type of incinerator within 1,000 yards of an estuary
6. No development of any kind within 300 yards of an estuary.
(This would also prevent future expenditures of federal money through FEMA, the federal insurance program, as well as other emergency expenditures.)
7. No dredging in the vicinity of any shellfish beds.
8. Immediate and stringent enforcement of all infractions of existing laws in regard to filling or polluting
9. Expansion of Federal Fish and Wildlife resources to meet the crisis

(over)



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The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133

Committee on
Health Care
Natural Resources and Agriculture
Transportation
GIGI MIRARCHI
LEGISLATIVE ASSISTANT

May 8, 1989

Gardner Auditorium - 10:30 a.m.

Hearing: Reauthorization of Magnuson Fishery Conservation and Management Act

Sub-Committee on Fisheries and Wildlife Conservation and the Environment (Sub-Committee of Committee on Merchant Marine and Fisheries)

Members scheduled to attend:

Congressman Gerry Studds, Chairman	- Massachusetts
Congressman Joseph Brennan,	- Maine
Congressman Jim Saxton,	- New Jersey
Congressman Don Young,	- Alaska
Congressman Nick Mavroules,	- Massachusetts

Background

- reauthorization of the Magnuson Fishery Conservation and Management Act
- passed 1976
- Act has been reauthorized three times, 1978, 1983, and 1986 - 3 year review cycle
- ushered in a new era for marine fisheries management for the United States by putting 200 miles off U.S. coastline under National jurisdiction
- established 8 Regional Fishery Management Councils
These councils prepare Fishery Management Plans (F.M.P.s) then the National Marine Fisheries Service develops regulations to implement F.M.P.s. Twenty-five complex Fishery Management Plans have been implemented by councils. Thirteen additional F.M.P.'s are in various stages of development

Recommendations:

- 1) Better co-ordination among the eight Regional Fishery Management Councils to manage marine resources throughout its' entire range. Clearer guidelines as to which council involved in drafting multi council fisheries management plans should take the leadership role.
- 2) Clear guidelines for co-ordinating councils with state fisheries management commission. Federal and state agencies need to cooperate and work with one another. (is: sharing data on fishing catch and effort)
- 3) Need co-operative and reciprocal law enforcement between state and federal agencies (is: U.S. Coast Guard and State Division of Law Enforcement)
- 4) Clearer guidelines to insure better compliance and enforceability of regulations.
- 5) Federal government needs to increase commitment to address pollution problems that threaten marine resources.

PATRIOT LEDGER

MAY 6, 1989

Fishermen: Too many boats, not enough fish

By Peyton Fleming
The Patriot Ledger

New England fishermen won a battle when Congress approved the 200-mile fishing limit in 1976. Now they have a bigger fight on their hands.

The extended fishing boundary succeeded in getting rid of foreign fishing boats within 200 miles of the U.S. coast, but the industry now faces a new set of problems: too many American fishing boats and the worst depletion of fish stocks in years, particularly among cod.

haddock and flounder, the traditional mainstays of the New England industry. Compounding the fishermen's woes are dramatic reductions in fish prices due to a recent influx of imported fresh fish.

So, as Congress gears up to reauthorize the 200-mile limit later this year, New England fishermen are soul-searching about their future.

So far, they've seen the government and industry do a deplorable job of protecting their precious resource. Efforts to preserve stocks by limiting a

fisherman's take have failed miserably, in part because of lax enforcement. Recent efforts have focused on protecting smaller fish and increasing net mesh size, but there have been no positive results.

"We've reached a saturation point. There is no more the resource can give us," said Scituate fisherman Frank Mirarchi, who lost money last year for the first time in 25 years.

Mirarchi said his landings have plummeted from 1 million pounds a year in the mid-1980s to 150,000 pounds last

year.

"It's almost embarrassing," said Mirarchi, president of the Massachusetts Inshore Fishermen's Association.

When Mirarchi was fishing for cod, haddock and flounder in the early 1970s, Massachusetts Bay and Stellwagen Bank were besieged by large fleets of foreign fishing vessels, which at that time were able to fish as close as 12 miles off the U.S. coast.

"They'd send entire fleets over here —

Please see P221 — Page 19

Woeful fishermen bemoan influ

FISH

Continued from Page 1

tankers for fuel, support ships for personnel and freighters to bring the finished product back," Mirarchi said, recalling the Russian, German and Japanese presence.

The foreign boats were primarily interested in squid, herring and mackerel — fish species that were of little interest to New England fishermen at the time. But, by the mid-'70s, it became obvious the foreigners were also cutting into the domestic mainstays of haddock, flounder and cod.

"After the fact, they'd say, 'Oh my dear, we took a lot of haddock in '65 and a lot of yellowtail flounder in '69,'" said Philip Coates, director of the state Division of Marine Fisheries.

"Ultimately, we all would have gone out of business if something drastic wasn't done," Mirarchi added.

That something was the 200-mile fishing limit approved in 1976 at the behest U.S. Rep. Gerry E. Studds, D-Cohasset.

The limit worked immediately. The foreigners left, and hundreds of new American boats took their place. But now it seems there are too many boats, and fish are suffering the consequences.

"We have ironically been a victim of our own success," Studds said in an interview.

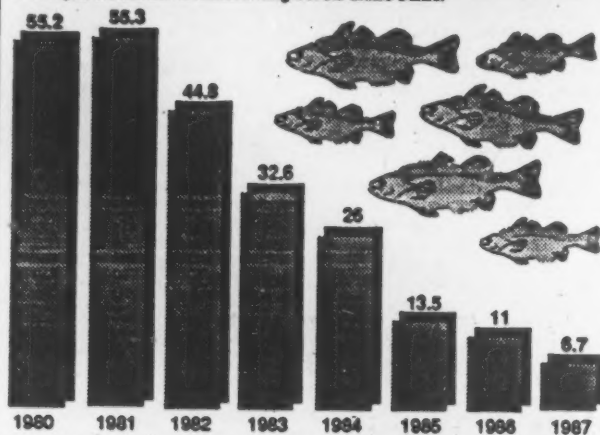
Studds said the 200-mile limit has revitalized the nation's fishing industry and pumped billions of dollars into coastal economies.

Commercial landings of fish and shellfish in Massachusetts were worth \$274 million in 1988, down \$5 million from the year before, according to the National Marine Fisheries Service. It was the first time since 1984 that the value of landings failed to increase.

Nowhere has the rebirth of the Massachusetts fishing industry been

Declining haddock catch

Catch in millions of pounds. Overfishing in New England is primarily responsible for the drop in the number of haddock caught in the United States.



Source: National Oceanic and Atmospheric Administration

Suzanne C. Wright/The Patriot Ledger

more visible than in New Bedford, which is now the nation's richest fishing port, with more than \$100 million in fish landings annually, thanks largely to the high prices commanded by scallops.

"In New Bedford in the early 1970s, if you went to the annual Blessing of the Fleet, it was a sobering experience to look at all of those old wooden boats," Studds said. "Now, if you go to the Blessing of the Fleet, you see a fleet of large modern steel-hulled boats — million-dollar-plus boats."

But filling those vessels is becoming more difficult.

The bread-and-butter groundfish species are at record lows. Leading the nose dive is haddock. The 6.4 million pounds of landings last year in New England were less than a

tenth of what they were a few decades ago.

"It's disgraceful," said Coates, referring to haddock's demise. "They're on the verge of economic extinction, which means fishermen don't go fishing for them anymore since it isn't worth it."

No doubt, haddock's poor standing shows the effects of a near-doubling in the number of trawlers in New England since 1976.

American fishermen have also been cut off from a bountiful portion of Georges Bank since 1984 when the World Court resolved a long-simmering U.S.-Canada border dispute centered on the fishing grounds.

But the decline also reflects the inability of the industry and government to manage their fishing resource.

ix of boats, depletion of stock

After the 200-mile limit was enacted, the government began using quota systems to limit the amount of fish that were being taken off New England.

The effort failed miserably.

"There were too many loopholes, people ignored them, and there wasn't enough enforcement," Coates said.

The Coast Guard receives most of the blame for the failure of the quota system.

"For years, we in New England have watched Coast Guard vessels that should have been responsible for fisheries law enforcement heading south after they leave Boston or New Bedford to conduct drug patrols in the Caribbean," Studs said.

But fishermen were also culpable.

"Fishermen would drop excess fish off (illegally) and come into port with the proper amount," Coates said. "It was a mess."

Now the New England Fishery Management Council is trying a new strategy. More fishing areas are being closed during spawning seasons and net mesh-size regulations are being tightened so smaller fish can remain free. Fishermen are also seeing increases in legal size requirements.

This spring, the council even went so far as to begin developing plans to limit new boats from entering the scalloping industry.

There has also been some action on the enforcement front. Last month, a boat owned by John Phaneuf of Middleboro was intercepted by the Coast Guard on charges of scalloping illegally in a protected spawning ground.

But it's still unclear whether the recent measures can get the industry back on its feet. And until that question is answered, fishermen like George Adams of Scituate plan to remain on the sidelines. Adams stopped fishing in 1985 so he could work in a machine shop. Meanwhile, his 58-foot trawler is sitting dormant in Scituate Harbor.

"I liked fishing and would rather be doing that than anything," said Adams, 51, who started fishing in 1981. "But financially it's better working on-shore right now."

Hearings to begin on 200-mile limit

BOSTON — The first of three regional hearings on legislation to reauthorize the 200-mile fishing limit will be held at 10:30 a.m. Monday at Gardner Auditorium in the State House.

The hearing, chaired by U.S. Rep. Gerry E. Studds, D-Conn., will include testimony from the National Marine Fisheries Service, the Coast Guard and various segments of New England's fishing industry.

**Status of
Groundfish and Scallops
Northeastern USA
1989**

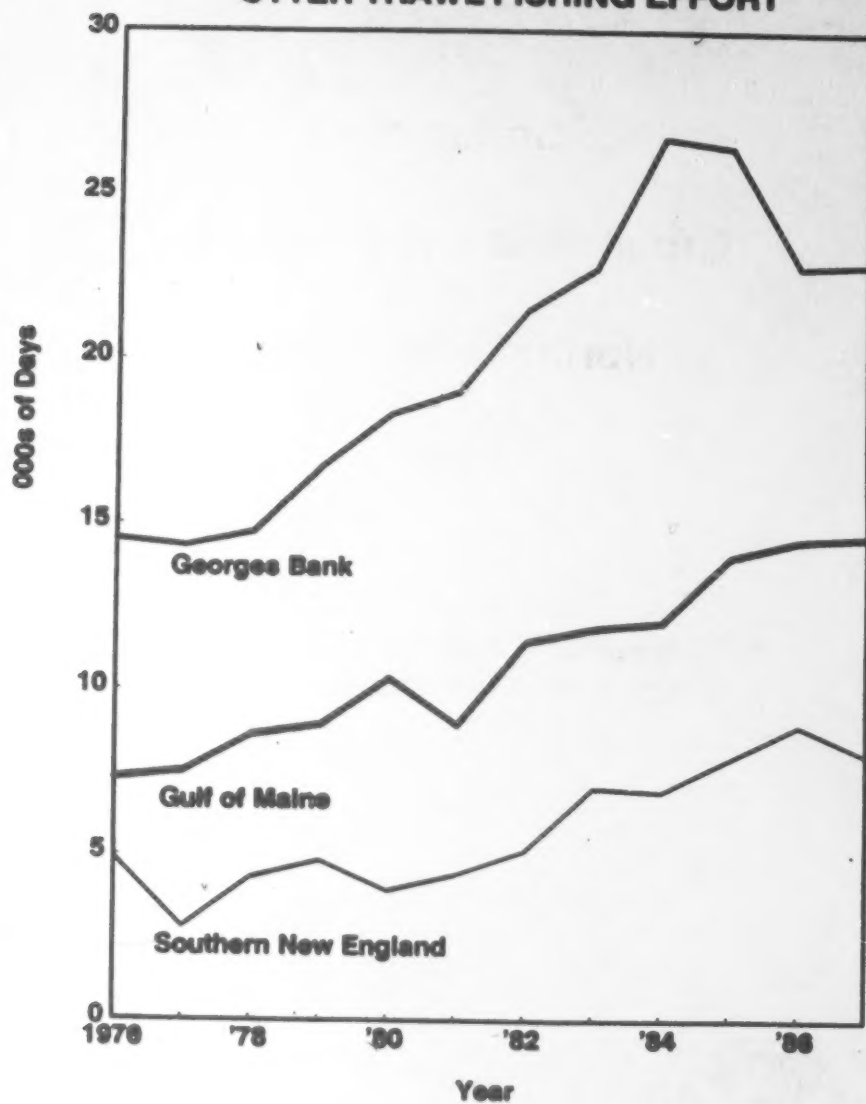
**Northeast Fisheries Center
National Marine Fisheries Service**

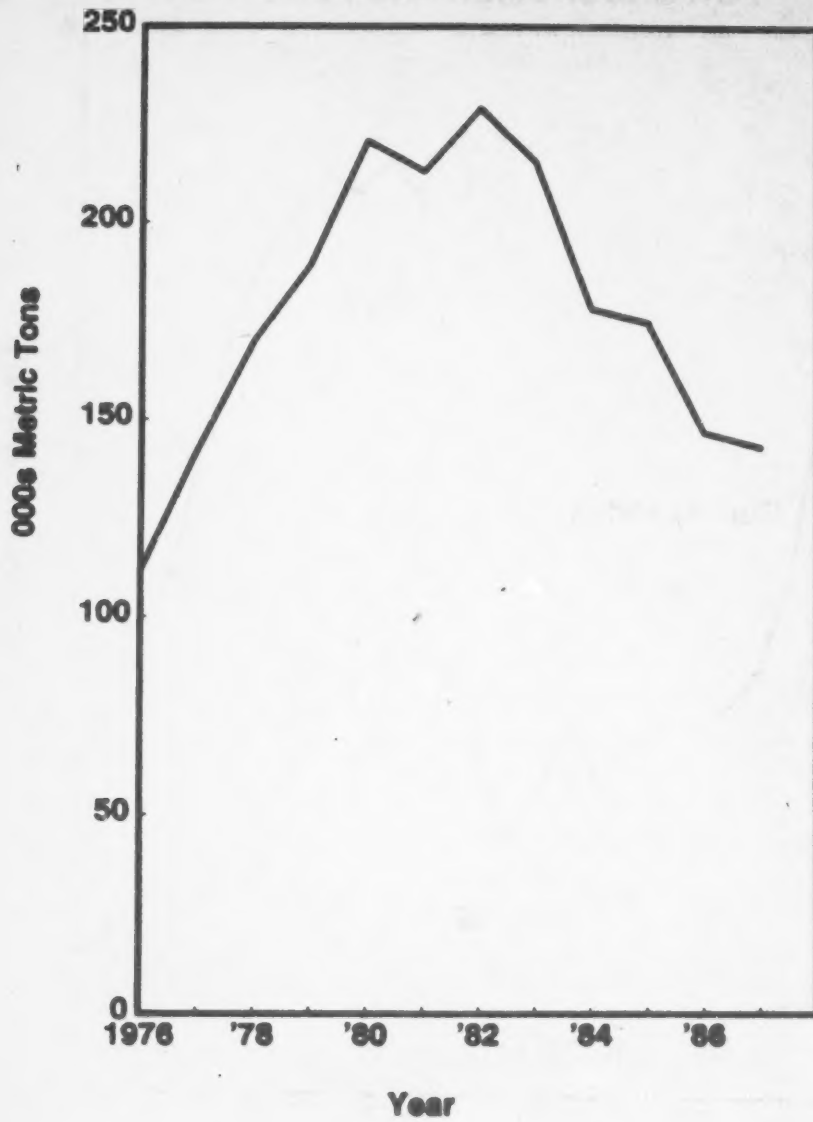


March 1989

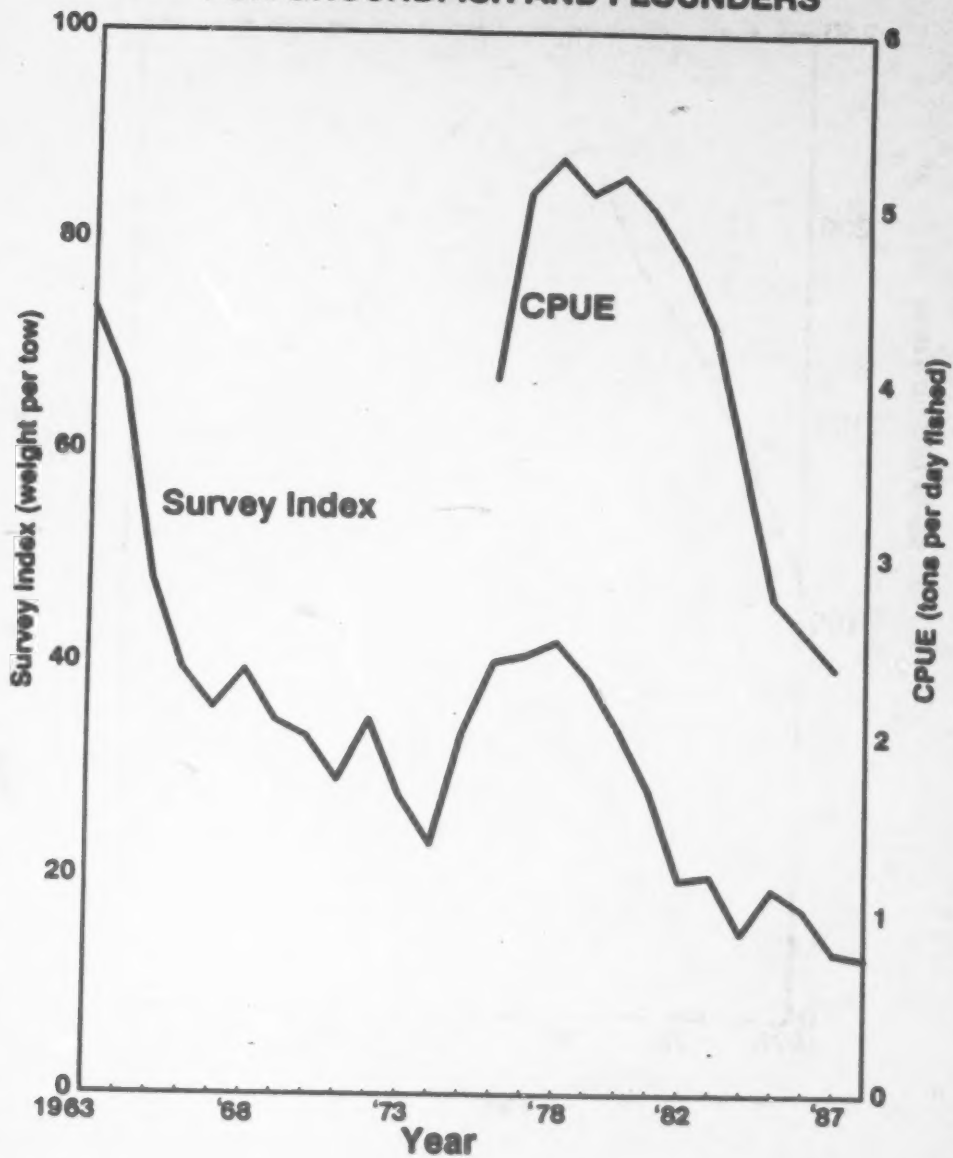


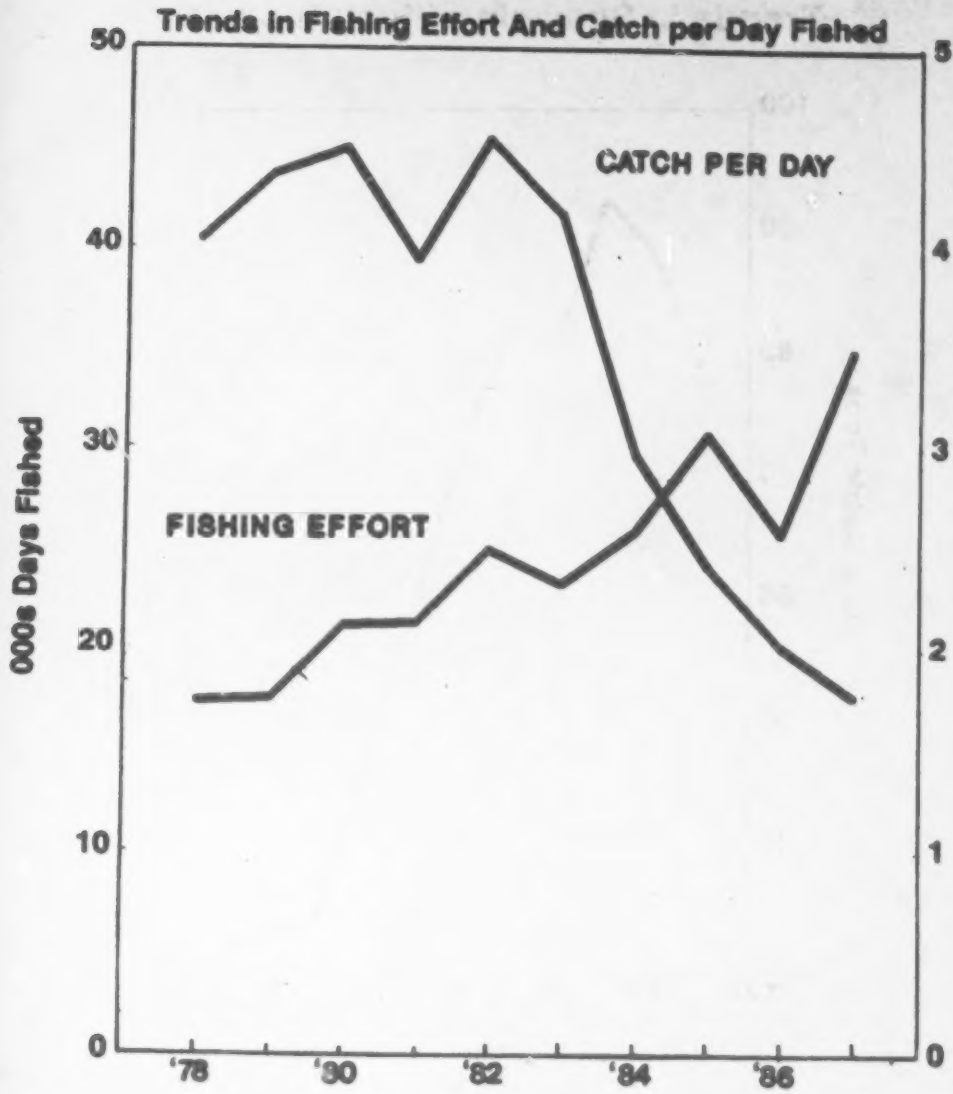
OTTER TRAWL FISHING EFFORT



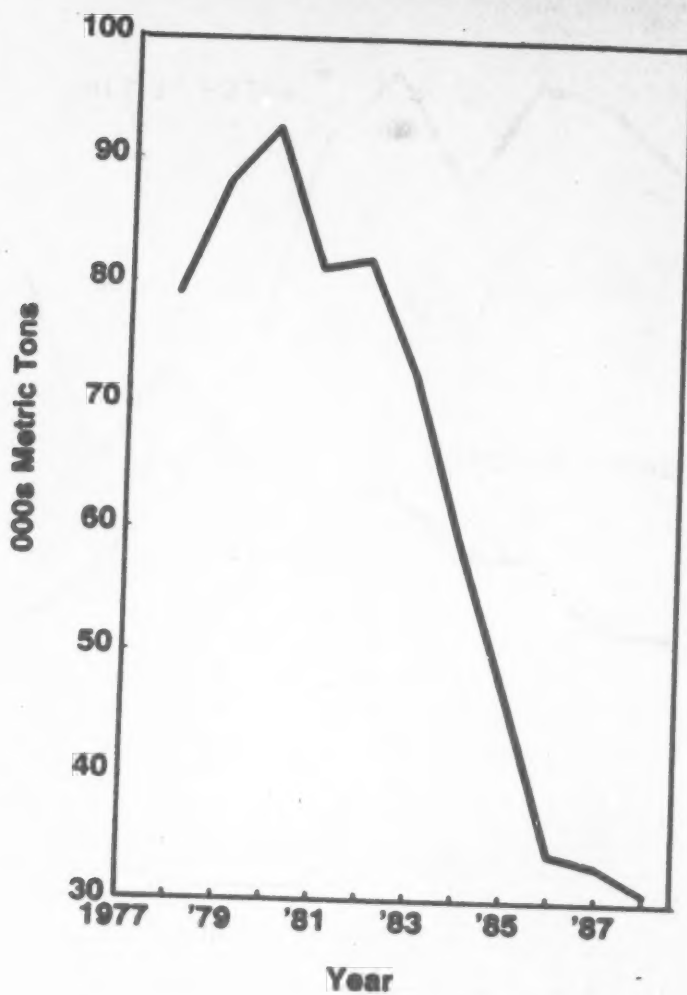
LANDINGS OF MAJOR GROUNDFISH SPECIES

ABUNDANCE INDICIES FOR GROUND FISH AND FLOUNDERS

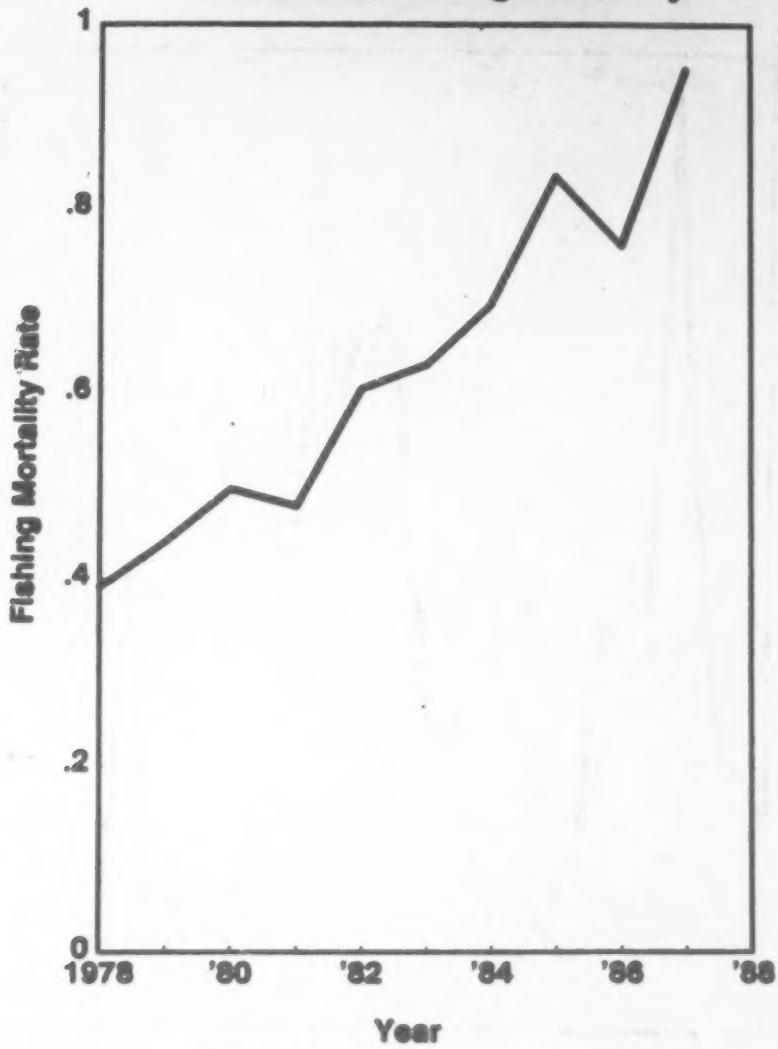


GEORGES BANK COD

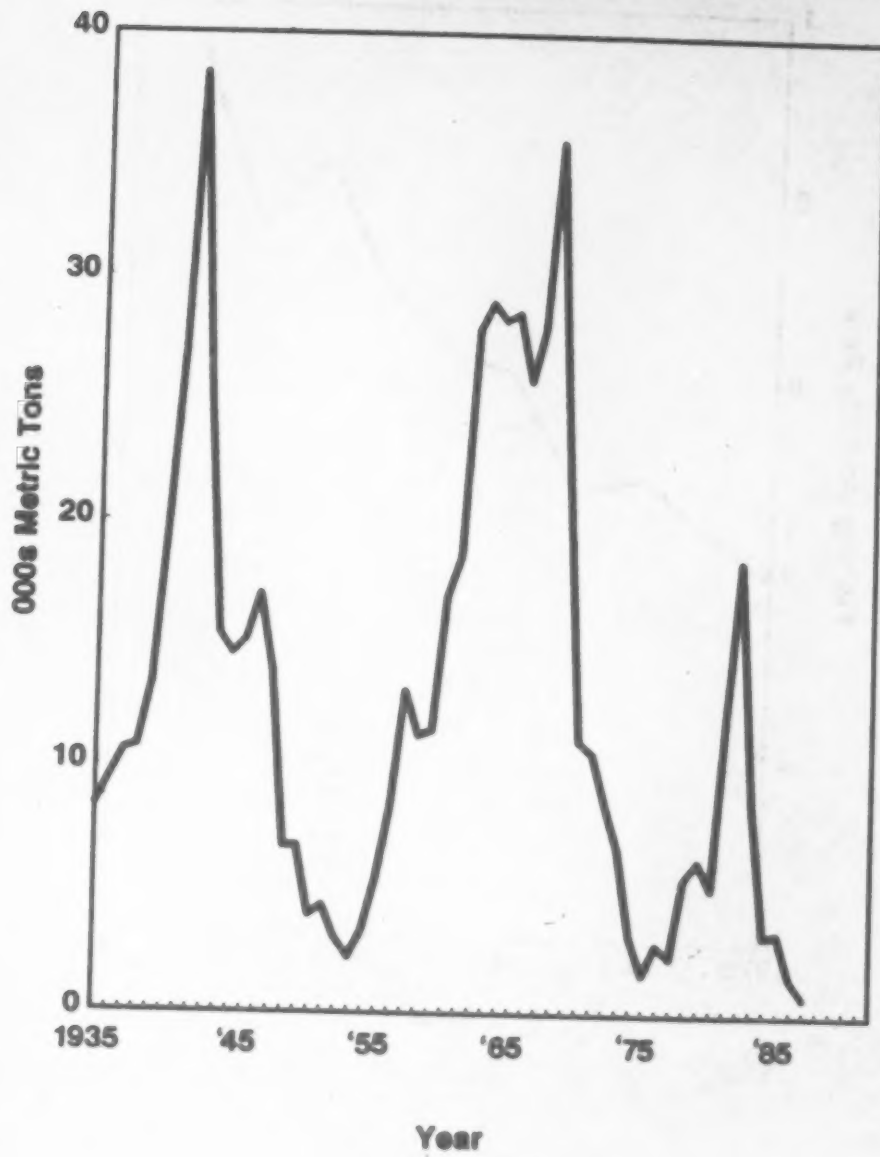
GEORGES BANK COD Trends in Spawning Stock Biomass



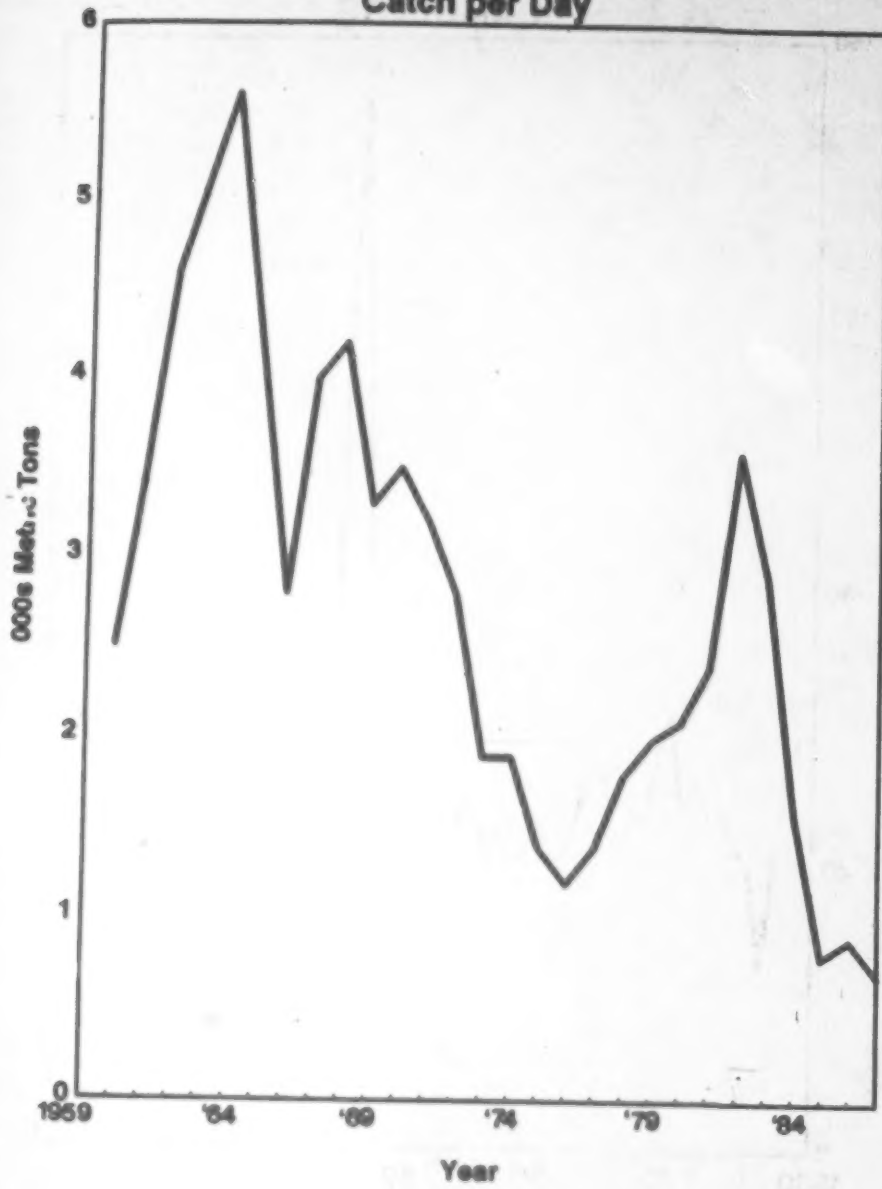
GEORGES BANK COD Trends in Fishing Mortality



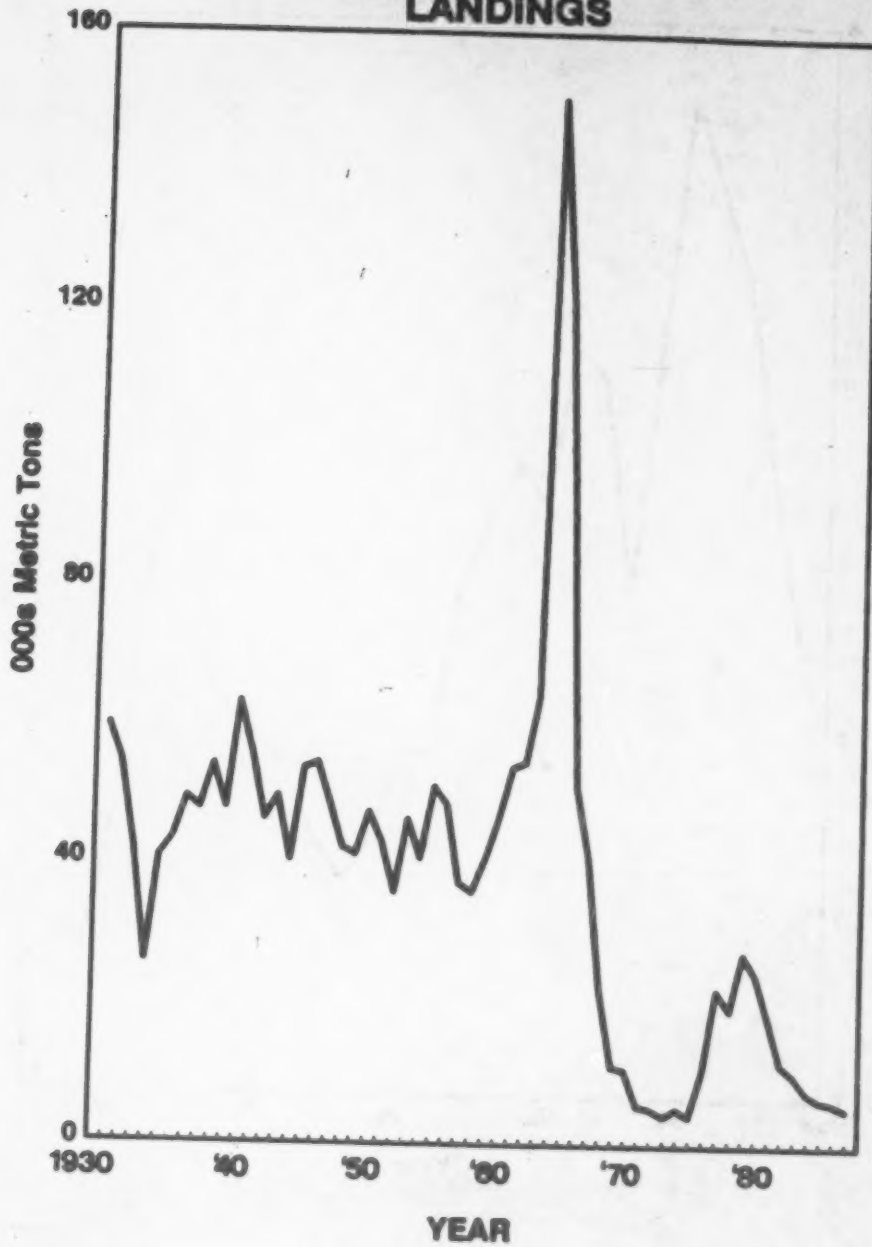
YELLOWTAIL FLOUNDER
Southern New England - Total Catch



SOUTHERN NEW ENGLAND YELLOWTAIL Catch per Day



GEORGES BANK HADDOCK LANDINGS



TESTIMONY OF RICHARD B. ALLEN CONCERNING
THE REAUTHORIZATION OF
THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT
PRESENTED TO
THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
OF THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
MAY 8, 1989

Mr. Chairman, members of the Committee, my name is Richard Allen. I am a commercial fisherman, a vice president of the Atlantic Offshore Fishermen's Association, a member of the New England Fishery Management Council, and a commissioner on the Atlantic States Marine Fisheries Commission. I appreciate the opportunity to express my views on the reauthorization of the Magnuson Fishery Conservation and Management Act. My testimony is based on my personal opinions and may or may not reflect the positions of any of the organizations with which I am affiliated.

The effectiveness of the Magnuson Act has to be judged in light of the two quite distinct purposes of the Act. Your invitation refers to the Act as the 200 mile limit law. For many of us who worked for the passage of the Act in the mid-1970's, the establishment of the 200 mile fishery limit and the elimination of foreign fishing were the primary goals for which we were striving.

Certainly the Act has been tremendously effective in "Americanizing" the fishery resources within the Fishery Conservation Zone, and now the Exclusive Economic Zone, to the extent that one seldom hears reference to the 200 mile limit any longer.

The focus of attention now is on the "Conservation and Management" purpose of the Act, and the national fishery conservation and management program established by the Act.

There is no question that the United States fishing industry moved very rapidly to displace foreign fishing effort and to replace that effort with a new, more powerful, more sophisticated fleet of our own. One needs only to picture any one of our major fishing ports in the early 1970's and compare that picture to today to realize the transformation that has occurred.

These ports, and the fishing fleets that sail from them, are dramatic evidence of the revitalization of the New England fishing industry that was brought about primarily by increasing demand and prices for seafood, coupled with a new era of optimism created by the 200 mile limit. These fleets are also evidence, however, that

the economic condition of the fishery is only indirectly related to the condition of our fishery resources.

In a few short years, we saw a complete turnaround in the supply and demand structure that primarily governs the prosperity of the fishing industry. When I first became involved in fisheries policy in the early 1970's, yellowtail flounder was available in quantities that led to industry support for restrictions on landings aimed at holding supply down and prices up. By the time the Magnuson Act had been implemented, the problem was not too many fish for the market, but a market and a fleet that needed more fish than the stocks were able to produce on a sustainable basis. Rather than supporting quotas, the fleet was soon fighting quotas as too restrictive.

It is an old adage that fishermen fish for dollars, not for fish, and the experience of the last 20 years demonstrates this clearly. Little, if any, improvement can be seen since 1976 in the abundance of many of our major commercial fish stocks, yet the fleet has increased its harvesting capacity manyfold.

The story of steadily increasing fishing pressure on steadily decreasing fish stocks has been told very simply by the annual statistics during the mid-1980's - "Landings down, value up" was exactly the opposite signal that the industry needed if the self-regulation of the fleet, in which many of us believed, was to stem the decline in abundance and begin the rebuilding, restoration, and maintenance of fishery resources that the Act envisioned.

1988 told a quite different story for the New England fisheries, one of increased landings, but a total value that was lower by 19 million dollars. The possibility that increased abundance of fish will lead to economic disaster for the fleet is a sad one to consider, and is a scenario that I don't believe the management system is prepared to deal with, should it develop. This likelihood was predicted by an MIT economist in 1976, but seemed improbable at the time.

What does history teach us about fisheries conservation and management that may be helpful to us in the future? First, it is clear that fishery resources are finite, as Congress expressed in the "Findings" section of the Magnuson Act. If we are "to realize the full potential of the Nation's fishery resources," we must be in a position to allow fishing at a level that crops off the available surplus from a stock, but protects the ability of the stock to continue to produce that surplus. In my opinion, the management system has not been able to reconcile the finite nature of fishery resources with the individual and collective desire to increase catches year upon year.

Second, we must recognize that fishing is an-economic activity. Conservation efforts that ignore the primary control exerted over fishing mortality by economics will only protect stocks by coincidence. This means that mesh sizes, fish sizes,

closed areas, and other traditional methods of conserving fish stocks can only be successful when matched to a particular level of fishing effort that is determined at present by the profit opportunities in the fishery. If effort is stimulated by higher profits from fishing, the conservation measures must be tightened if they are to continue to do their job. Tightening of the conservation measures in order to keep fishing mortality, and thus landings, from exceeding a level that will maintain the productivity of the stock implies that the expectations of higher catches held by both the new and existing fishermen will have to be thwarted. Implementing more severe restrictions under these conditions has proven to be exceedingly difficult.

Because I feel that the New England Fishery Management Council has ignored the overriding control over fishing mortality exerted by economics, I am particularly troubled by the tone of the testimony presented to this Subcommittee on behalf of the Council. Council Vice Chairman Jim Warren will tell you today that the New England Council will consider more direct controls on fishing activity in the near future. His comment that "the Council had no control over the fleet's rapid growth from 1978-1985" indicates that this growth may have been a problem. He goes on to identify the cause of this growth as: 1. the 200 mile limit; 2. a large increase in valuable fish stocks from 1980-82; 3. major technological improvements in fishing including the advent of electronics; and 4. an increase in the consumption and price of fresh fish. He concludes, however, that this type of growth is unlikely in the near future. Council Chairman Borden expressed a similar opinion before your hearing in Washington on May 2. Is it reasonable to conclude that further increases in fishing effort are not a threat to our fishery management goals?

We can consider the reasons given for the previous expansion in the fleet one by one. Certainly we are not going to stimulate effort with the passage of the 200 mile limit again, but we should be careful not to assume that excess fishing effort has only been a problem since the passage of the Magnuson Act. In 1969 the Stratton Commission on Marine Science and Engineering recommended to Congress "that voluntary steps be taken, and if necessary, Government action to reduce excess fishing effort in order to make it possible for fishermen to improve their net economic return and thereby to rehabilitate the harvesting segment of the U.S. fishing industry." In 1976 the National Academy of Engineering concluded that "Government and industry must face up to the difficult task of devising an equitable method for limiting entry into those fisheries that have a limited productive capacity."

The Council's second cause of the rapid increase in the fleet is exactly what we have been striving for in our management efforts. Both Mr. Borden and Mr. Warren indicate that fishermen are now reporting large numbers of juvenile groundfish throughout New England. It therefore appears that one of the causes of the fleet's previous rapid growth may be reappearing.

Do we have any reason to doubt that major technological improvements in fishing will continue to take place? I don't see why we should, keeping with us another of the causes of the rapid growth in the fleet identified by the New England Council.

It would be particularly troublesome and ironic if we relied on either a stabilization or a decline in the consumption and price of fresh fish to control fishing pressure. While this is possible, there are certainly many people in the fishing industry and in the management agencies who are working hard to see that it does not occur. If they are successful, as I am sure we all hope they will be, they keep alive the fourth cause of rapid fleet expansion identified by the Council, and cast serious doubt on the Council's conclusion that further dramatic increases in fishing effort are unlikely.

The Council testimony also notes that "fishermen used Federal subsidy programs such as the Capital Construction Fund and the Fishing Vessel Obligation Guarantee Program to finance at least part of this expansion" in the fleet from 1978-1985. To me this implies that the Council was or is opposed to the use of these programs. In fact, however, the Council rejected a motion that would have requested the National Marine Fisheries Service to discontinue the availability of these programs for the New England fleet. To my knowledge the programs remain available and the Council has never formally objected to them.

These and other considerations have led me to the conclusion that we must limit access to our fisheries if we hope to maintain both productive resources and a prosperous industry. This is a view that is at odds with the traditional position of many New England fishermen, but I believe it is a view that is rapidly gaining acceptance, both in New England and around the country.

I do not believe that limiting access means that we have to kick a lot of people out of the fisheries, or require massive buy-back programs, as some critics of limited access seem to assume. I believe our greatest need is for a system that will create a conservation incentive. Under open access, fishermen are asked to invest in conservation with the understanding that they will have to share any return on that investment with new entrants to the fishery who made no sacrifice. Fishermen are not being stubborn or greedy when they oppose measures that will cut their pay, they are simply making rational investment decisions that are supported by economic studies of fisheries regulation. If we hope to conserve our fishery resources, we must show fishermen that they will get a return on their conservation investment.

Not only will fishermen gain from an investment in conservation under a limited access system, but our Nation will gain as well, justifying the necessary investment in enforcement and administration of our fishery management system that we all agree is needed.

If fisheries management needs to move in the direction of limiting access, are there changes needed in the Magnuson Act or in the research or funding for fisheries management? In general the Act seems to treat the subject of limited access in a responsible manner, allowing its use, but establishing criteria for limited access systems.

The biggest problem that I see is in funding the necessary research, management, and enforcement activities that might be necessary or appropriate for a limited access fishery. Under the present budget constraints it is unlikely that any ambitious system of fisheries management is likely to succeed if it relies solely on appropriations from the general treasury. Congressman Young has offered a funding alternative that is similar in concept to that supported by the New England Fishery Management Council. By allowing fishery management plans to contain a provision for a license fee in excess of the cost of administering the license system, the plan could incorporate a funding arrangement that would be developed and reviewed through the same public process that applies to other measures of a management plan. I would agree with Senator Stevens, however, that any such fee should never get into the federal treasury, since it may be impossible to get out, regardless of any safeguards that may be placed upon it. It is also essential that any such fee be used only for the benefit of the fishery for which it is collected, leaving the general administration of the national fishery management system to be funded by general tax revenues, as is appropriate.

In 1984, while he was chairman of this subcommittee, John Breaux was quoted as saying that "property rights in fishery resources are the fundamental foundations on which the secure development of the U.S. fishing industry can take place." There is no question in my mind that this difficult transition will take place. My primary request of this Committee, and of your colleagues in the Congress would be to help us to make this transition in the most responsible and equitable way possible.

Thank you for your consideration of my views.

TESTIMONY PRESENTED TO THE SUBCOMMITTEE
ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

May 8, 1989

Gardner Auditorium

State House of Massachusetts

Boston, Massachusetts

Mr. Chairman it is my pleasure and honor to appear today to testify before the Subcommittee as you consider reauthorization of the Magnusen Fishery Conservation and Management Act. I am William Gordon, Executive Vice President of the New Jersey Marine Sciences Consortium. The Consortium is an alliance of 28 colleges and universities in the New York/New Jersey/Pennsylvania region, organized for cooperation in marine research, education, and public service. Prior to joining the Consortium's staff I spent over 30 years within the National Marine Fisheries Service and its predecessor the Bureau of Commercial Fisheries. From mid 1980 to late 1986 I served as Director of that agency. During this period of public service I learned a great deal about the fisheries of the United States and the world. From 1970 until 1979 I served as Deputy Regional Director and Regional Director in New England actively involved in the fishery management offices of that period. Today I will address conservation issues regarding New England fisheries and suggest amendments to existing laws

In 1977, shortly after the Magnusen Fishery and Conservation Act was complemented and the fishery management councils were formed the provisions of the Act were viewed as the panacea to the fisheries problems of the United States. A state of euphoria persisted along the waterfronts

as U.S. fisherman believed that now that foreign fisheries would be controlled that the seas would forever provide limitless bounty to them. Investors flocked to build new vessels particularly for the groundfish and other fisheries off New England. In this they were aided by liberal tax laws and encouraged by the Obligation Guarantee Program of the National Marine Fisheries Service. No one wanted to accept the advice of the federal scientists and managers that a more prudent, cautious approach should be taken so as to rebuild the biological balance and species composition that existed before the advent of the robust foreign fisheries of the 1960's and early 1970's. Few would accept even a modest regulatory regime. Being present in New England as Regional Director of the National Marine Fisheries Service and a member of the New England Fishery Management Council, I can readily recall the long hours of public discussion in which I pleaded for restraint on development of new fishing effort. Unfortunately my position in support of the scientific evidence went unheeded. We had forgotten or refused to accept the fact that serious overfishing had occurred on all stocks and that careful management was needed to restore stability to those resources. Members of the fishing communities and the New England Council would not accept a regulatory regime which would restrain fleet expansion.

History has clearly shown that I and the scientist were correct. We have paid a very dear price for failure to heed the advice of the professionals. Ones I might add who were greatly respected for their work in ICNAF which in the early 1970's had become effective in bringing under control some of the serious overfishing problems. The price has been very high for this failure.

Off New England, by the mid or late 1980's both landings and stock condition for many fisheries are the poorest on record. In an effort to maintain market access and a processing work force many fish processing plants operators in New England are buying greater amounts of Canadian caught fish. Many have found it easier to just go out of business. In doing so the labor force quickly disperses into other jobs, and their processing skills will undoubtedly be lost forever as few new processing plants will open. Further as plants close, the land and plant is sold to other interests thereby forever closing out its use in fisheries.

Canadian firms have accelerated direct U.S. market penetration with processed products. The Canadian provincial governments have encouraged and assisted such firms in order to achieve greater employment in Canada. In short they are rapidly taking over the Eastern United States fresh fish market. Even Iceland imports fresh fish directly to the United States. A number of United States processors have told me that within five years, unless there is a major turnabout in availability of United States caught fish, they also will be out of business. I will relate what I view to be the causes of this very serious condition.

The passage of the Magnusen Act brought extreme optimism to the American fishermen, processor and investor. The large quantities of fish formerly caught by the foreign vessels would now be caught by Americans and huge profits were the thoughts of the day. New boats replaced old boats, bigger boats replaced smaller boats, and some fishermen built a second or even third boat. The United states consumer was not interested in mackerel, large herring or red hake, and the silver hake market was small. The New

England fishery was a traditional groundfish fishery of cod, haddock, and a few species of flounder, along with a shellfish fishery of scallops and lobsters. Effort, therefore, increased on the traditional groundfish species. The number of vessels in the otter trawl fishery doubled from 825 in 1977 to 1,620 by 1983. The number of days fished increased 73 percent overall from 1976 to 1986, with almost a 100 percent increase in southern New England. The average size of the fishing vessels also greatly increased. New electronic equipment could now be purchased and the wheelhouses bristled with new technology. The fishing power of these larger vessels increased by a considerable amount. With this large increase in fishing effort, catches increased. In the Gulf of Maine bottom trawl landings increased by 41 percent from 1976 to 1984.

Many species became heavily fished in just a few years. Catches doubled or more then doubled in the Gulf of Maine for American plaice (dabs), gray sole (witch flounder), winter flounder, white hake, cusk, Atlantic wolffish, and haddock. Fishing mortality increased so greatly during this period of time that 40 to 50 percent of the fishable populations of some groundfish were landed annually. Large numbers of smaller fish were discarded. Such large increases in fishing mortality caused the population abundance of many groundfish species to decline sharply. As a result, catches started to decrease in the early 1980's and still continues today.

The decrease in groundfish landings during this period (1983 to 1987) was about 31 percent for the Gulf of Maine, 55 percent for Georges Bank (1982 to 1987), and 28 percent (1984 to 1987) for Southern New England. Overall abundance declined for the principle groundfish and flounder off the New

England coast 65 percent from 1977 to 1987. The decline in abundance is actually worse for some species. The declines in abundance are taken from research surveys, commercial catch per unit of effort as calculated stock biomass.

In 1977, the principal groundfish and flounder species-stocks contributed 79 percent of the otter trawl landings in New England and the mid-Atlantic area. Catches for most of the species in 1987 were far less than the MSY and less than the catches 10 years earlier. High fishing pressure, therefore, reduced the abundance of fish populations so much, so quickly that the fisheries have had to depend on spurts of recruitment. The problem, of course, in these high-mortality fisheries is that as the spawning population becomes smaller and smaller, the prospects for year classes becomes less and less.

Overfishing can affect fish stocks in several ways but two are most obvious. First, there is the direct reduction of abundance of an individual resource, reducing its presence in the ecosystem for a considerable amount of time. The length of time the resource is depressed in abundance depends to a certain degree on the presence and shape of any stock recruitment relationship and the chance interactions with environmental conditions that would produce strong year-classes despite small spawning stocks. This kind of effect could, however, be expected to be reversible over a fairly short time period, depending on the relationship of that species with others in the ecosystem. Second, beyond the direct effect on individual stocks there is the potential disruption of normal competitive predator-prey interrelationships that could alter

the structure of the ecosystem. The result is a change in species composition and dominance. Fishing can cause these interrelationship to rapidly change and be in a constant state of disequilibrium unlike any normal species mixture observed in the past. Changes in these interrelationships can be expected to be long-term, perhaps semi-permanent in nature.

Many stocks will continue to decline for the next five to ten years even if the fishing is reduced or nonexistent. The last good year-class of redfish, for example, was born in 1978 and this stock will continue to decline even in the absence of fishing. The last good year-class of pollock occurred in 1982. All recent year-classes have been poor assuring that the stock will continue to decline unless fishing is greatly reduced well into the 1990's. By the late 1990's we might see opportunities for recovery for many offshore stocks in the form of scattered good recruitment. If this recruitment can be protected by better fishery management practices there could be some rebuilding of some stocks by the year 2000.

Today, after twelve years of experience under the Magnusen Fishery Conservation and Management Act, it is time to ask if America's New England fisheries are better off than in 1976 when the Act became law? Clearly, the answer for many is NO!

We need a new conservation movement in the 1990's. Different in many ways from the efforts put forth since 1977. Rather than concentrating on U.S. fisheries development following the withdrawal of foreign fishing we need

to focus more on conservation, wise and full use of the resources available, stock rebuilding and economic stability. We need to learn the lessons self-taught over the past decade -- that Americans can and will overfish -- now we have no one else to blame. I recognize that this will be difficult as New England fishermen in particular are wedded to the need to maintain a constant flow of fresh fish to the local markets.

There are a number of positive steps that in my view must be taken.

1. First the National Marine Fisheries Service must be re-establish its reputation by loudly and visibly reordering its priorities so that the public is clearly convinced that the top priority of the agency is protection and wise stewardship of the resource base and its habitat in its care, not the production of either products or services. It cannot stand by and permit inaction or action by the Councils to further erode the Nations' fishery resource base.
2. The ability of a limited number of professional resource managers and scientists to provide the best possible management information will be a reflection of the time they are allowed to spend on the issues. NOAA and DOC must find ways to replace report and justification writing budget analysis and planning with management execution, data and information acquisition, analysis and dissemination and enforcement. The agency should look for self-imposed restraint here, but Congress may also need to look seriously at this problem.

3. Congress and the agency must find ways of adequately financing the essential needs of the agency. Personally I favor creating equality in financing the agency by revising the Saltonstall-Kennedy Act so that 100 percent of the truly fishery product tariff revenues are dedicated to the agency. These funds should be augmented by fees obtained from an annual vessel fishing license sales and from a landing tax paid by all who sell their catch -- i.e. applied to those species of fish and shellfish recreations or commercially taken and offered for sale. The license fees and landing tax should apply to any owner operating a vessel taking any species under Federal or Federally sponsored management. All revenue so derived should be made available until expended by the agency subject only to overview by the Congress. Too often funds made available to the National Marine Fishery Service by Congressional action have been used elsewhere in NOAA or the D.C. or their expenditure obstructed by the OMB.

By revisions to the Saltonstall-Kennedy Act we would be giving equal status of the fishery product tariff revenues as compared to the Wallop-Breaur Amendments to the Dingell Johnson programs which allocates tariff receipts on fishing tackle and related gear to this program. If appropriate, some significant portion of the Saltonstall-Kennedy Act funds could be earmarked for market promotion or industry oriented research designed to improve efficiency in presenting the consumer a safe, quality seafood product at reasonable price.

Provisions in the authorization for levying a landing tax should provide for revenue sharing with the states provided they work in partnership with the federal government in achieving better stewardship of the living marine resources.

4. Amendments to the Magnusen Fishery Conservation and Management Act are also recommended:

Title II

Amend section 201(d) to delete alternative systems for calculation of the total allowable level of foreign fishing (TALFF) established under P.L. 96-561. The alternate TALFF is a complex formula used only once. Councils use optimum yield to accomplish the same purpose.

Amend section 204(b) (10) to require that the owner or operator of any foreign fishing vessel to pay reasonable fees as determined by the Secretary of Commerce and the amounts collected must be deposited in the National Marine Fisheries Service fund for use by the agency for carrying out the Act. Currently fees are determined by a complex formula which is no longer relevant to accomplishing the Act or utilization of the remaining underutilized fish resources of the U.S. Further the funds are currently deposited in the General Fund of the United States.

Title III

Amend section 302(d) specifying that all council members, staff, advisory committee members etc. shall be reimbursed for travel expenses at the appropriate federal rate. It does not appear equitable for such to be at rates not applicable to Federal employees which is currently the case. Consideration should also be given to capping the rate of pay for Council members rather than linking such pay to the GS rates.

Amend section 302(1) by affording the Council which believe a particular habitat loss or degradation will result in lowered productivity from that habitat or will result in reducing the wholesomeness or safety of the seafood products produced in that habitat the opportunity to petition the Secretary to hold hearings and gather data and evidence regarding that concern. Should the evidence support the views of the Council then the Secretary must take action to remove the threat.

Amend section 304(d) to allow for the collection of domestic fees unrelated to administrative costs incurred in issuing permits. This would eliminate the limitations on establishing domestic licensing and landing fees now limited to administrative costs of issuing the permits.

Amend section 305(e) to require that whenever landings from any fishery falls below 60 percent of the long term yield as a result of recruitment failure or overfishing that the Council and or Secretary must impose a moratorium on new or replacement vessel

entering that fishery until such time as the fishery recovers to 90 percent or more of its long term yield.

Amend section 307 to make any act of assault on an observer a criminal offense. It is my understanding that recently several observers have been assaulted. This amendment should broaden coverage to include all persons acting on behalf of the National Marine Fisheries Service.

Amend section 308 to increase the limit on a civil penalty from \$25,000 to \$100,000. In addition the reauthorization Act should make it clear that forfeiture of permits should be imposed for repeat offences. Often the cost of monetary penalty is recovered by repeated poaching. Long-term permit sanctions remove the ability to violate. Fishermen understand such an imposition.

Amend section 308(e) to disallow the Secretary the privilege of compromising any civil penalty which has been imposed by the civil law judge. Allow on individual access to the courts for such purposes.

Amend section 309 to provide that a person is guilty of a criminal offense for assault of an observer.

In addition to the amendments to those Acts mentioned above Congress should also abolish the Obligations Guarantee Program. It has served its purpose and no longer has a place in the fisheries of the future. Those

currently in the program should not be penalized but should be allowed to use their funds for upgrading their vessels in such areas as safety, crew comfort, sanitation, handling of waste (MARPOL), refrigeration of hold or improving the quality of the fish. In addition the owners should be encouraged to invest in gear research to reduce by-catch or improve escapement of small and/or unwanted fish species. Another area worthy of investment of crew training. Congress has become increasingly concerned with the high rate of casualties attributed to commercial fishing activities. I believe one aspect of the issue can be attributed to the level of safety knowledge of crew members.

Mr. Chairman I would be remiss if I did not draw your attention to several other areas in part aimed at improving the manner in which the United States carries out its Federal fisheries responsibilities.

In 1984, the membership of the American Fisheries Society expressed major concern for the decline in important United States fisheries. Valuable stocks of fish and shellfish were declining, recreational opportunities diminishing, dependence upon imports growing, and habitat essential to fisheries degrading at a rapid pace. In response to this concern the Society appointed a committee to review the distribution of fisheries research and management authority among federal agencies, and the rationale for the pattern of organization and services; to explore alternatives for improving federal organizations and operations for fisheries conservation and management; and to formulate a proposal for reorganization of the Federal Government's role in fisheries resource affairs. In 1986, after two years of intense review, the report was issued

and unanimously endorsed by the leadership of the Society.

The report concluded that major problems exist:

1. No clear federal fisheries management policies;
2. No strong champion for policy development;
3. No visionary leadership;
4. Competition for limited budgets;
5. Overlapping responsibilities and duplication of effort;
6. Poor communications and coordination;
7. Inefficient use of facilities, equipment, personal, and other resources; and
8. Conflicting policies, regulations, and operating procedures.

Surprisingly, the committee identified 37 federal agencies with fisheries responsibilities, and that there could be significant savings by consolidation. Within the Fish and Wildlife Service and the national Marine Fisheries Service alone, \$5 to \$9 million could be reallocated for resource management programs through elimination of administrative duplication at regional and headquarters levels.

The Society's findings also were recognized by the President's Commission on American's Outdoors. Their report, released in December 1986, states that "development of coherent national programs has not been possible due to fragmented federal fisheries authority." The report recommended establishment of a single federal fisheries agency.

The American Fisheries Society is committed to pursuing reorganization of federal fisheries programs, and to improve fisheries management, and habitat conservation. It has established a federal Fisheries Responsibilities Committee, and directed it to pursue strategies for implementation including stronger liaison with Congressional members and staff; encouragement of improved federal policies and programs; and establishment of an alliance of concerned individuals and organizations to support and assist in the initiative. We believe the Administration and the Congress will be interested in acting on the initiative.

This restructured agency aided by the Councils and the public should be charged with the responsibility to conserve, protect, and enhance the Nation's living aquatic resources and the necessary habitats in partnership with the States, to provide the institutional climate for balanced utilization of these resources for commercial and recreational purposes. Further, it should give full recognition that fishery products are an essential part of the American diet.

Lastly Mr. Chairman I must remind the Congress of their role in achieving better management of our resources. Congress must of course provide an appropriate budget and assure adequate professional staffing. Equally important they must establish an institutional climate in which that professional staff can do their job. Frequent overviews may be necessary by the Congress to assure that the job is being well done and that the needs of the resources are being met. Unwanted and unneeded however will be the interventions from members of the Congress requesting exceptions for their constituents on penalties, regulations etc. Their continued interest

is important and desired but obtaining special treatment seriously undermines the conservation regime.

Mr. Chairman, the record suggests that with appropriate leadership and commitment that this country can do a credible job of resource management. There have been many success stories. Natural resource systems show surprising resilience and capacity for recovery once people halt abuse and begin to apply good management. People are the problem now with our fishery resources and the environment, but they don't have to be. They can also be the solution if they dedicate their efforts to do so. I believe the American people and the nation deserve better from their governments. We need to act now before we regret the future. What we do over the next decade can be either the source for despair or satisfaction.

FOR PRESENTATION BEFORE THE SUBCOMMITTEE ON FISHERIES
AND WILDLIFE CONSERVATION AND THE ENVIRONMENT
MAY 8, 1989

Attorney Harvey B. Mickelson
Seafood Dealers Association
New Bedford, Massachusetts

The years have passed quickly since the days of 1976 and 1977 when the Studds Magnuson Act was considered to be the catalyst of the United States domestic fishing industry, the likes of which this country had never known. Section 2 of the Act, subparagraph a-1 declared that, "the commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the nation", and goes on to say in subparagraph a-6 that "a national program for the conservation and management (be instituted) to realize the full potential of the nation's fishing resources". It appeared as though the United States was at last declaring that it had a domestic fishing industry and that it was adopting the foundation for declaring a national fisheries policy. The years have seen a huge introduction of capital into the harvesting and processing sectors of the industry in anticipation of the unlimited amount of natural resources that we in the Northeast thought would be available to us with removal of the foreign fleets. Pursuant to the Act, we were going to prepare "fishery management plans" which "shall prevent over fishing while achieving on a continuing basis the optimum yield from each fishery for the United States fishing industry".

For species that we in the Northeast are most familiar with, we have carried out our conservation and management by instituting plans which have used as their primary conservation tool measures which are destructive to the fishery stocks, proven to be unenforceable and in my opinion have resulted in an absolute violation of the Act and the basic standards set forth in Section

301. To this day we have management plans in the groundfish and flatfish fisheries that require a fisherman to refrain from catching fish under a certain size while using equipment and nets which cannot control the size of the fish that he is catching. Once caught, it is illegal for him to throw it overboard once he realizes it does not meet the legal size and it also makes it illegal for him to bring it ashore and sell it. In the various fish and scallop plans, we have used as the primary management tool minimum size, average size, samples, shell size and trip limits and within all these wonderful man made artificial methods of achieving the national standards, many of the stocks have suffered and are at a lower level than they were twelve years ago. Much of the destruction of the stocks during these years or the maintenance of the stocks at such low levels has been because of the plans that have been devised. The plans that include trip poundage limitation, size limitations, or net size limitations, have provided the basis for destruction of millions of pounds of product because of the discarding of the undersized or the sale of the illegal. Enforcement has been spotty and just enough to allow a black market in illegal fish and scallops to exist. The marketplace has suffered because of the sales of illegal product. The fleet and the processing plants are operating substantially below economic levels. If the harvesting and processing industry were allowed to operate without government interference and the artificial and destructive conservation and management measures now in existence, the state of the stocks and the state of the industry, as a result of pure economic factors, would be adjusting to product availability and economic conditions.

I believe that both would be in better condition.

In the meantime, I suggest that an amendment be made to the Act which absolutely mandates that no fishery management plan be adopted and no regulation be promulgated that does not carry with it a clear basis for funding and maintaining the personnel and facilities available to enforce the plan on a uniform basis at all places to which the plan applies.

I would recommend that the general counsel's office scrutinize the methods and procedure being used by enforcement in their normal operations pursuant to the Act and determine whether those procedures in any way are contradictory to the due process normally accorded individuals and companies in similar circumstances.

I would recommend that the structure of the regional councils be continually monitored to make certain that representatives of those that are actually engaged in day by day harvesting and processing activities are represented on the council and that their presence is not diluted by those who work in the wonderful world of theory, statistics and conjecture.

I would recommend that each council be required at the end of each year to assess the plans in existence and to vote whether the measures in existence have:

- 1) achieved on a continuing basis the optimum yield for each fishery;
- 2) have been adequately enforced in all areas in which the plan applies;
- 3) have resulted in products harvested from the sea during the course of the harvesting operation pursuant to the particular fishery plan being used or disposed of in a manner which "has contributed to the food supply, economy, and health of the nation".

I would recommend that unless the prior questions can be answered in the affirmative by each council on each plan that the plan be terminated forthwith and that no additional management plans be instituted in this region until all outstanding plans are assessed as herein provided.

Respectfully submitted,

Harvey B. Michelson
Attorney for Seafood Dealers Association

Testimony of James Warren, Vice Chairman
New England Fishery Management Council
on the MFUMA

Before the House Subcommittee on Fisheries and Wildlife
Conservation and the Environment
Boston, Massachusetts May 8, 1989

Chairman Studds and members of the Subcommittee, thank you for allowing me to appear before you today. My name is Jim Warren and I am Vice Chairman of the New England Fishery Management Council and Chairman of the Council's Multispecies Committee. I will confine my remarks to the New England Council's Multispecies Plan and how it relates to suggestions for strengthening the Magnuson Act. Other Council members will further discuss issues pertinent to the reauthorization of the Act.

Many of the stocks important to New England's mixed trawl fishery are managed under this Plan and, as you probably know, many of these are near historic low levels. The Multispecies Plan is a long-term program which has been in place for 2-1/2 years. It was developed with input from the fishing industry to allow fishermen the flexibility to switch among areas and species depending on changes in fish availability, prices and weather. The fishery includes 8 species directly regulated by the Plan and more than a dozen other commercially valuable species. Over 1200 trawl and gillnet vessels land a different mix of these species throughout New England.

Under this Plan, the Council made major changes in fish sizes, mesh sizes, the way mesh regulations are enforced, and seasons and areas for small mesh fisheries. These types of changes take time to work. The Council has also continually made improvements in the Plan. In the past two years, we have made 18 separate modifications to the original Plan in response to changing resource and industry conditions, to the Technical Monitoring Group's evaluation of the management system and the concerns of the National Marine Fisheries Service and the Coast Guard.

These modifications have strengthened mesh size regulations and improved critical age-at-entry controls. They include a single-mesh-size-throughout-the-net requirement, the prohibition of small mesh in the working area of the vessel, increases in minimum fish sizes in order to reduce the incentive to violate mesh regulations, increases in the regulated mesh area and trip by-catch limits for small mesh fisheries.

At present, the Council is proposing the flexible area action system, a measure unique to U.S. fisheries management, which could give greater flexibility to protect small fish, through carefully targeted mesh regulations, closed areas or other measures. This system has the support of the Northeast Fisheries Center, the NMFS Regional Office, the Technical Monitoring Group and the industry. The Council will also continue to consider other ways to reduce unnecessary small mesh mortality on cod, haddock and flounders.

Additionally, in response to concerns from the fishing industry, NMFS scientists and the Technical Monitoring Group, the Council will consider more direct controls on fishing activity in the groundfish fishery in the near future. I will have more to say on the subject of effort controls, but first

J. Warren Testimony

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I must address more immediate problems - enforcement and the overall level of administrative and legal support for Council Plans.

Any management system needs to be adequately administered and enforced. It is interesting to note that the Council's first groundfish management Plan, implemented in 1977, was based on catch quotas. Catch quotas are currently used in many parts of the world, notably in Europe and Canada, because they are regarded as the simplest way to directly control fishing effort. Yet one major reason why the Council, with overwhelming support from the fishing industry, abandoned this system was that NMFS lacked the resources to properly administer and enforce it.

Because of the lack of enforcement, large quantities of fish were illegally landed or mislabeled. Under-reporting and misreporting severely damaged the very source of information, the Commercial Fisheries Database, on which the Council and NMFS relied for management information. Fishermen who obeyed the quota regulations were put at a great competitive disadvantage to those who did not. The tension over this system reached the point where incidents of violence on the waterfront and at public meetings were narrowly averted.

More recently, inadequate enforcement resources have had a similar effect on the Multispecies Plan. Too many violators of fishing regulations can afford to view the infrequent, minimal penalty they might receive as a cost of doing business. In addition, the lengthy period before penalties are imposed and extensive plea bargaining allow them to continue fishing and gives other fishermen the perception that the violators avoid any penalties, further reducing the incentive to comply with the regulations. Again, fishermen who obey regulations are put at a severe competitive disadvantage to those who do not.

The Council also has struggled to get adequate levels of administrative support from NMFS for programs such as the Exempted Fisheries Program, sea sampling and conservation engineering which are critical to the success of the current management system.

Instead, the Council has been too often second guessed for its lack of direct effort controls. These types of measures are always controversial and cannot be implemented without high levels of industry and NMFS administrative support which, to date, have been lacking. Ironically, the principal measure in a NMFS draft Secretarial Plan for the multispecies fishery was a 6" codend mesh size and not effort or catch controls. The Council rejected the measure because other measures were needed first in order to improve compliance with the 5-1/2" codend mesh size.

The Council is currently considering effort and entry control measures for the sea scallop fishery where such measures, if adopted, would probably be easier to implement. Experience in the scallop fishery could help in deciding whether such measures would work in the multispecies fishery. However, any program of effort or entry controls would require more effective administrative and enforcement support.

Unlike Federal agricultural agencies, the Council may not use Federal funds to reduce industry output by compensating fishermen for reducing their productive capacity. Without industry support to decrease fishing effort, the Council had no control over the fleet's rapid growth from 1978-1985. In fact,

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fishermen used Federal subsidy programs such as the Capital Construction Fund and the Fishing Vessel Obligation Guarantee Program to finance at least part of this expansion. Fortunately this type of growth, which was fueled by the advent of the 200 mile limit, a large increase in valuable fish stocks from 1980-82, major technological improvements in fishing including the advent of electronics, and an increase in the consumption and price of fresh fish, is unlikely to occur again in the near future.

On a more positive note, fishermen in the Northeast have the flexibility to harvest a wide variety of species under the current management system, and to a large extent, have survived declines in the major stocks and the loss of some of our most productive fishing grounds to Canada. Fishermen are now reporting large numbers of juvenile yellowtail flounder, cod, whiting and American plaice (dabs) and it is our belief that the latest NMFS survey data will confirm that recruitment for some important stocks, including Georges Bank haddock, appears to be improving.

In closing, I would like to note that the Council looks forward to cooperating with the fishing industry and NMFS in constructively addressing the problems of the New England fisheries and that we need your support to do so. I also would like to submit written testimony at a later time to substantiate my comments and will try to answer any questions you might have. Thank you very much for the opportunity to provide comments to the Committee.

2359C



CAPE ANN VESSEL ASSOCIATION
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May 3, 1989

The Honorable Gerry E. Studds, Chairman
U. S. House of Representatives
Committee on Merchant Marine and Fisheries
Subcommittee on Fisheries and Wildlife
Conservation and the Environment
Room 1334, Longworth House Office Building
Washington, D.C. 20515-6230

Re: Remarks of Mr. Joseph M. Brancalone, Cape Ann Vessel
Association, Concerning Magnuson Act Reauthorization

Mr. Chairman and Committee:

Thank you for the opportunity to address the Committee on this matter of very great importance to the domestic marine fisheries industry. As the Executive Director of the Cape Ann Vessel Association, representing sixty fishing vessels operating from the ports of Gloucester and Boston and ports in Maine, fishing throughout the Northwest Atlantic ocean for Cod, Haddock and other groundfish, I have had considerable exposure to the evolution of the Magnuson Act. My family has derived its livelihood from the fisheries off Gloucester for three generations and fifty years. Before taking my present position, I served as a member of the New England Fisheries Management Council, as the Executive Director of the Gloucester Fisheries Commission, as a member of the Massachusetts Marine Fisheries Advisory Commission, and in numerous other capacities representing my fellow fishermen. I say fellow fishermen because, most important of all, I have worked on the decks of fishing vessels for twelve years.

You have asked for my impressions and suggestions with respect to the reauthorization of the Magnuson Fishery Conservation and Management Act. Any evaluation of how the Act has worked over the past 13 years and how it should work into the future would have to begin with agreement on what the objectives of the Act were to begin with. I am afraid that even

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among those who worked hardest to secure its initial passage, there has been and probably still is considerable disagreement on what those objectives were.

If the objective of the Act was to eliminate foreign fishing off of our coasts, then it has been a notable success. Foreign fishermen still have access to certain of our fisheries and, thankfully, foreign consumers have a strong demand for fish products from our waters, but U.S. fishermen and processors have the first priority to the resources and significant development and modernization of our fleets, shoreside facilities and technology have been the direct result.

If the objective was, in addition, to conserve and enhance fish stocks for the greater benefit of domestic harvestors and consumers, then I think the assessment is less favorable. The vessels of my Association have never had more difficulty finding fish and making ends meet than they do today. Many families with generations and decades of involvement in fishing have been and are being forced out of the industry because the regulations which were imposed to bring the stocks back have failed to do so and have hamstrung the law-abiding fisherman, preventing him from making ends meet.

I am not sure whether the occasion of the reauthorization of the Act will permit us and you to resolve the problems which still face my industry, and from long experience I know that government action is never a panacea. But I would respectfully offer the following suggestions for changes to the Act, both "procedural" and "substantive", which I and the Association I represent would ask you to consider.

I will begin with the "procedural" matters:

1. The Council management process is too cumbersome.

This has been a common complaint over the years and, despite strict time limits on plan submission, review and approval by NOAA Fisheries, it still takes far too long for the Councils to address problems of general concern and frequently of general consensus within the affected segments of our community. We all recognize that a process such as was established under the Act to assure public input takes some time, and none of us would surrender our ability to tell the Councils how their plans will

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affect us, but before and after the mandated public input periods the Councils have to work quicker, smarter and more decisively. The private and personal agendas of technical experts must be subsumed to the practical realities of maintaining a working fishing industry over time. Realistic compromises are far more productive over time than stand-offs.

2. Industry participation is frequently late or lacking.

In my home port of Gloucester, most fishermen have lost the interest they had in the Council and the regulations it produces. This has come about for several reasons; inconvenient meeting times and locations, endless and indefinite agendas, lack of travel monies for those who represent the industry, and a perception the Council has not and does not listen to those who make the effort to appear. The Councils should devote substantial efforts to build an active public constituency and listen to that public when developing rules and laws. Please make sure they do.

3. The council member selection process is too politicized.

Most of the initial members of the Councils were persons of experience and stature in the fisheries community. Over time, those members have been replaced, frequently with what are perceived by those of us in the industry as part-timers whose political ties and contributions, not knowledge of fisheries, were the deciding factor in their appointment. If the Councils are going to regulate the complex economic and social structure of the fishing industry, involving scores of separate and distinct fisheries, they will have to be constituted of persons with a full-time dedication to understanding fisheries and the people who depend on fisheries for their livelihoods.

4. Fisheries need a higher profile in our government.

In most other countries, fisheries are a cabinet-level concern. In the U.S., fisheries are buried deep within the Commerce Department and must compete within NOAA for resources and attention with the Weather Service and other agencies. The cost of putting fisheries issues, and the respect for the environment which those issues require, in second, third or fourth place for our government's attention has been demonstrated time and again. It is the reason our fisheries are

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not producing what they could, why pollution and environmental catastrophes repeat themselves, why our fisheries trade deficit remains large, and why our fishing industry lags in sophistication and productivity the industries of many other nations. In fisheries, the U.S. is a third world nation because fisheries are, to our government, a third level concern.

5. We need better fisheries data.

When fishery management plans which have the potential to reduce the income of certain groups of fishermen by ten to thirty percent or more are developed, they are, as often as not, based on stock assessments and social and economic data which was first collected twenty years ago and which has not been updated for the last six to eight years. When management decisions on area closures and reopenings are made, they are based on inadequate amounts of information which may or may not have been verified through accepted scientific procedures. Data collection has to be upgraded, including the use of more voluntary sea sampling and observation of actual fishing operations. Such efforts will also help assure the Councils are in touch with day-to-day reality and allow fishermen to appreciate that fact.

6. Existing management measures must be enforced.

Some of the fishery management programs now in place are byzantine labyrinths of measure upon measure which few in or out of government can understand. Compliance with layers of measures can be difficult even if (as is rare) the different schemes do not conflict with each other. A primary reason for all this complexity is that the measures which were first put in place were never adequately enforced. When they consequently failed to lead to stock recovery, new measures were added instead of the Councils and NOAA devoting the efforts required to make the earlier, simpler plans work. Time and again the fishermen of Gloucester have asked the government to enforce what it has already in place before looking for some new way to regulate. The monies appropriated to the Coast Guard each year for fisheries enforcement, by far the largest single item of money expended under the Act, seem to be lost as the Coast Guard devotes itself to drug interdiction or other activities of greater importance to its commanders. To make the fishery regulations promulgated to implement the plans encouraged by the

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Act work, you need to direct the Councils to develop measures which can be enforced at the dock, and to ensure that enough compliance inspection agents are available at those docks to make simpler, less burdensome plans work. You should consider a requirement that no Council could increase the burden of regulation imposed by one of its plans unless and until it could establish the existing regulations were being fully and fairly enforced. Otherwise, honest fishermen find their activities further and further circumscribed and those who violate the regulations have more and more to gain.

I have a number of "substantive" issues as well:

1. Making management measures make economic sense.

Congress has in the past amended the Act as it involves limited entry in fishery management plans. It is difficult to say whether adopting a plan with limited entry would be easier or more difficult today, since no one seems to want to tackle the job. You have probably heard that fishermen are opposed to limited entry and in many cases and many respects that is true. But as businessmen, we know that it is not possible to make an investment (like the investment of reduced catches frequently required to bring fish stocks back) unless two conditions are met. A businessman must have enough left over after making the investment to live on, and the expected return must be greater than zero. The government has unfortunately made it clear that we cannot expect the same consideration of economic support that farmers enjoy, so we are never assured that during a stock rebuilding program we will be able to survive. And without some controls on new entry to a fishery, once the fishery does recover, any benefits will quickly be lost to those who sacrificed, and will go instead to the Johnny-come-latelys, often opportunists with little respect for the communities or the resources they exploit. While we cannot give limited entry a blanket endorsement, we suggest that Councils could more readily gain public support for conservation measures if those measures made sense from an investment perspective. That is, the fishermen would have to be left with enough during rebuilding to survive, and the return on their sacrifice would have to be greater than zero. You should require the Councils to demonstrate clearly, understandably and specifically, that each new management measure or plan makes investment sense as I have described it here. Until a Council can demonstrate that

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the affected fishermen will survive through rebuilding and be better off in the long term, it should not be allowed to impose a cost through regulation. If current compensation cannot be assured, the eventual return will have to be higher to justify the effort. If this means entry must be restricted to achieve the return, extraneous impediments to such a step should be removed before the restrictive conservation program is adopted.

2. Achieving international fairness.

Since the division of fisheries zones between the U.S. and Canada, the line over Georges Bank has caused serious problems for our domestic fleets. Perhaps a dozen boats have been siezed and fined heavily for fishing where for hundreds of years they could fish. Several have been fired upon, risking loss of life. The fishermen of Cape Ann have fished in what are now exclusively Canadian waters for generations. Today U.S. fishermen have less right to the stocks and fisheries which were theirs than do fleets from Spain, Portugal and the Soviet Union. We need a mechanism to give U.S. fishermen at least as much access to the fisheries of Georges Bank and northward as is available to deep water fleets from around the world. Perhaps even more important, fish which cannot legally be taken under our management program are routinely landed in Canada and shipped into our markets. While we all believe in the value of open trade, you must take steps to curtail Canada's access to our fish markets until Canada gives our fishermen access, with reasonable conditions, to traditional fishing grounds. And you must ensure that fish we must avoid or throw back to comply with your laws don't get to market from Canadian vessels before we can return to port.

3. Giving U.S. fishermen access to joint venture opportunities.

Primary objectives of the Act were to provide for full utilization of our fisheries resources and access to domestic fishermen and processors in first preference to all others. In the area of joint ventures, the mechanisms used to assure the preference have tended to perpetuate an age old imbalance of power which allows the fish dealer to control and exploit the fisherman. Domestic fish dealers and processors frequently use the joint venture approval process to prevent or heavily condition joint ventures so they will be assured continued supplies of fish at bargain basement prices. The best interests

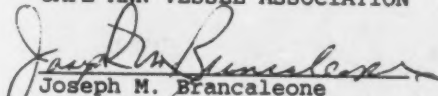
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of the nation and the fishermen will be served if fish taken from our Fishery Conservation Zone can be delivered to those willing to pay the most over time. We suggest that you revise the joint venture approval process to provide a "right of first refusal" to domestic processors and dealers which will allow them guaranteed priority to our fish resources only if they are willing to meet the competition. We propose that joint venture proponents who have negotiated firm contracts with foreign users be encouraged to perform without restrictions unless domestic purchasers are willing to enter into firm contracts providing pricing and delivery terms at least as favorable as the negotiated joint venture terms. Otherwise, joint venture approval will continue to hold the fisherman hostage to the dealer, a position which for centuries has resulted in great profit to the dealer and great uncertainty and hardship for the fisherman.

On behalf of the Cape Ann Vessel Association, I thank you for the opportunity to make these remarks and would be pleased to discuss these or any other proposals with you or the Committee. If the result is a reauthorized Act more sensitive to the concerns I have raised, it will be worth all of our time and efforts.

Sincerely,

CAPE ANN VESSEL ASSOCIATION


Joseph M. Brancalone
Executive Director

STATEMENT
OF THE
SEAFOOD PRODUCERS ASSOCIATION

ON

HEARING ON THE REAUTHORIZATION
OF THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SUBMITTED TO THE
SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT

Mr. Chairman and Members of the Subcommittee:

My name is James Costakes and I am the General Manager of the Seafood Producers Association. The SPA was organized in 1923. Membership is comprised of persons who own and operate fishing vessels out of the Port of New Bedford. I have been an active participant in the commercial fisheries of New England for over forty years. During the past twelve years, I have been actively involved in fisheries management issues. The comments in this statement are personal and are also reflected by our membership.

We feel that there are several major flaws in the existing system that must be corrected or addressed promptly. Otherwise, management by the Council in New England is doomed to failure. What better proof of this is there than to have the majority of the constituency it serves state publicly that they have lost faith in the ability of the Council to manage wisely the fishery resources under its jurisdiction. This is exactly what is taking place in most of our major ports in the Northeast.

I believe that we have to accept the fact that we will never have sufficient law enforcement at sea and on land to provide the needed regulatory system that is called for in our approach to fisheries management. Especially, as it relates to the groundfish and scallop fisheries. There is no incentive to the fisherman to operate legally for he is penalized financially. In most instances it is the fishermen that operate illegally who are the receivers of the financial gains. Limited law enforcement should dictate that our efforts and emphasis should be directed to the types of management that can be observed and enforced by relatively few in numbers. We cannot continue to allow an open fishery without limits on the amount of annual withdrawals. We

cannot set minimum fish sizes without corresponding mesh sizes that increase discards that are of no value to anyone. We feel that this is a negative approach to management.

When the "Management Act" first came into being, fishermen and processors in substantial numbers participated in the process. As time passed, interest decreased noticeably. Today, very few people with direct investments or interest participate personally in the process. Public hearings are not well attended. Therefore, policy is established from comments received from small numbers. We have to improve and increase our methods of communication, as well as, educate our constituents in the process. The lack of credibility that exists with the Council must be reversed.

I personally feel that the Council staff does not have enough expertise in marine biology. We cannot depend solely on data that might be available from the Center at Woods Hole. When we pass through periods of tight budgets, the priorities of the Center may be different than that of the Council. Marine biology cannot take a second place to economics. There has to be a balance in drawing up any management scheme.

There must be respect between the commercial fishermen and the enforcement agents plus NOAA Counsel. This could be developed through communication via such channels as an annual regional seminar whose purpose would be to clarify controversial or confusing regulations. Each party should respect the others' responsibilities.

Another area of concern is the makeup of the Council members. How

can Council members make decision on fisheries management without previous experience? Members of the Council, and especially the Chairmen of the Committees, should understand the segment of the fisheries they oversee. Even to the extent of their taking a trip aboard a fishing vessel to fully understand the process.

One of the most critical issues that the industry and the Council have had is the constant cry for more law enforcement and I certainly agree. But, we must be flexible in our approach or we will defeat our purpose. I would like to elaborate on the areas in which this is happening. For instance, the Scallop Management Plan is solely based on a meat count. It took almost six years before we were made aware of the fact that there could be a substantial meat weight loss during spawning. We still do not know exactly the time this spawning occurs. It could be as early as September through as late as April. But the Council implemented an additional 10% meat weight tolerance to be effective from October 1 through January 31st. The Council had also asked in this amendment that this spawning activity be monitored for possible changes. To my knowledge, we haven't received any information on this to date.

During the first six years of scallop management, vessels were violated for as little as one tenth of an ounce. These vessels had tried to comply. Vessels, using coffee cans and other containers, forced to mix thousands of scallops, try to be within reasonable compliance. Then they are checked for compliance by enforcement with sophisticated digital scales and if they are off the slightest degree are in jeopardy of losing a good portion of their livelihood. In my opinion, this is not the kind of management that industry can accept.

We cannot continue to implement management systems in areas where there has not been extensive biological and economic data. Although the Council is not perfect and everyone learns by mistakes, we have problems in rectifying or improving any problems in judgements because of the long drawn out process that the system now requires. This problem exists and fishermen cannot wait for months and in some cases longer even though the Council recognized and approved any changes that had to be made.

The Council develops and submits management plans or amendments for review and approval. Then, their participation in the process stops. The regulatory process now begins. The Council does not participate in that process. For instance, the Council has tried to submit penalty schedules on several occasions because they felt that the penalty schedule for borderline cases were too severe. However, these recommendations were not approved by N.O.A.A. Counsel.

The Council must have more authority in all segments of the management and the regulatory process. Industry has tried for the past five years to change the management structure for scallops. They have become frustrated and have lost faith in our system. Hopefully, new concepts that have been submitted will be forthcoming.

I want to thank the Chairman and the Committee for allowing our Association to participate on these issues. I will be glad to answer any questions.

STATEMENT OF
JEFFREY H. KARLIN
EXECUTIVE DIRECTOR, MAINE SARDINE COUNCIL
PRESIDENT, ASSOCIATED FISHERIES OF MAINE
BEFORE THE
SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND
THE ENVIRONMENT
ON THE
REAUTHORIZATION OF THE FISHERY CONSERVATION AND MANAGEMENT ACT
H.R. 2061

THE STATE HOUSE, BOSTON MASSACHUSETTS

MAY 8, 1989

Chairman Studds, members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the Fishery Conservation and Management Act (FCMA) in the context of its reauthorization through H.R. 2061. I will also comment briefly on Congressman Young's bill, H.R. 1554.

I am Jeff Kaelin, the Executive Director of the Maine Sardine Council, but I am also here as the President of the Associated Fisheries of Maine. The Maine Sardine Council is an agency of the State of Maine and is an organization of the five companies who produce sardines and other canned herring products with nine plants in Maine; the only canned herring-producing State in the United States. The Associated Fisheries of Maine represents some 50 Maine companies and organizations encompassing operations involved in the harvesting, processing and marketing of groundfish, mackerel, herring and lobster along with members of ancillary industries including packaging manufacturers and banks.

I understand that a principal interest of the Subcommittee today is to focus on the success or failure of the Act as its implementation relates to the region's groundfish fishery. In this context, my remarks are representative of the unanimous view of the Association's Board of Directors. We are proposing one substantive amendment to the Act today, but only in general terms.

The Maine Sardine Council is also proposing an amendment to the Act, at Section 306 affecting the consideration of Internal Waters Processing (IWP) ventures, when the fishery involved is managed by a marine fisheries commission. Our intent is to develop a better interstate management system for these fisheries in this region.

A copy of our proposed language on this point is attached to my written statement. I intend to go into more detail on this issue but for now want to state that the goal of developing a working management system for Atlantic herring has also been unanimously endorsed by the Associated Fisheries' board.

While it is true that groundfish landings are down, we do not share the gloom and doom scenario that has caused some to look for dramatic changes in the way that the groundfish resource in New England is being managed.

Fishermen and fish processors continue to make money in this business in our state. People with large capital investments are optimistic about the future and believe they will survive, given the opportunity to do so. The regulation of the production assets in this business by the market place is still seen by us as the most efficient determinative of who should survive and who should not. It is widely assumed that some fishermen will not be able to survive in the groundfish fishery but this risk is accepted by those within our organization who believe it won't be them, and are working hard to see that it will not be.

This economic theory is seen as the key to producing the incentives and willingness to accept risk upon which the success of this region's fishing business is built.

We make these statements, not as Pollyannas but as people who have seen the implementation of the FCMA in New England begin to bring many commercial fishermen to the realization that they have a stake in the conservation and management of the resources which they and processors and consumers depend upon for their livelihood or enjoyment. This is an evolutionary system, based on a fledgling science which needs more time before we judge it to be in need of overhauling.

While the Council system may be far from perfect, we strongly believe that federal management measures should be developed within the Councils and that the system developed under the Act (as cumbersome as it is) should continue without major changes.

Some positive shifts in management philosophy which we have seen in this region over the years is an increased willingness to allow management measures proposed by fishermen to work and a willingness on the part of the National Marine Fisheries Service to both help work to speed up the management decision-making process and punish management-measure violators by strengthening penalties for noncompliance.

Some examples of these changes are the amendment proposed for the groundfish plan which would implement a Flexible Area Action System, to reduce bycatch and discards in the exempted fisheries, requirements that excluder trawls be utilized during the extended portion of this year's shrimp fishery and the order that a groundfish boat be tied up for an extended period of time for violating conservation regulations.

We strongly believe that our most serious federal fishery management problems come from the inefficient implementation of the Act, principally through a shortage of dollars for research in support of management, and an enforcement record which needs to be improved.

It took a year for the Fisheries Service and the courts to tie up the boat I've just referred to, for example. NOAA satellite costs and other budget constraints have just about removed the "service" from the National Marine Fisheries Service in recent years thereby giving inadequate support to the Council's to perform as perhaps they could.

Specifically, we believe that the New England Council's multispecies management plan should be given more time to work. While it is widely believed that stricter enforcement is absolutely necessary, we believe that compliance is becoming a reality. In our fleet, we estimate that about 85 per cent of Maine groundfish operators are complying with today's groundfish management measures. When scrod represents only about 20 per cent of the Portland Fish

Exchange's cod landings, we are led to believe that our fishermen, for the most part, are complying with today's groundfish regulations. While a 5 1/2" diamond may not be the ultimate gear restriction, its use has definitely limited the harvest of sub-legal fish.

This is not to say that we could not be managing smarter, however. One suggestion which we would like to bring to the Committee's attention today is a request that permits be provided to individual fishermen which could be revoked when that individual was found guilty of violating a management measure. We believe that this change would go even further in ensuring compliance than we expect tying up a vessel will. A combination of revokable vessel and fishermen permits would help make the current groundfish plan work better by eliminating the opportunity for bad actors to continue fishing, paying fines as a cost of doing business.

Of course, when the word "permit" is mentioned, the word "fee" is coming next from some quarter. Let us address this point by stating that while we are not endorsing a fee system for fisheries management we believe that H.R. 1554, introduced recently by Congressman Young, is on the right track when it comes to setting the level of fees based on agreement within the Council system and tied to each specific Council's needs. We are concerned, however, that even dedicated revenue accounts will be raided and that fees for management and conservation do not necessarily mean more money to work with.

While we might grade the Council system with a B-, we would probably be giving the states the benefit of the doubt by awarding them a D+.

We believe that the most serious flaw in the creation of the FCMA has been the resulting erosion of support for consistent interstate management since the creation of the Act. If the Council system isn't working, interstate management of transboundary resources doesn't exist.

One example, before I turn to herring, of a failure of state management in the groundfish fishery is the fact that the Massachusetts's minimum mesh size is still five inches. Some argue that the 5 1/2" mesh should be increased while this major fish-producing state isn't even in compliance with the federal regulations.

Turning to herring, but still on the subject of Massachusetts, I want to point out the basis of concern within the Maine Sardine Council over the potential for damage to our business represented by the proliferation of herring IWP's in recent years. Even though the Atlantic States Marine Fisheries Commission's Atlantic herring section wrote to Governor Dukakis last October, advising against any additional IWP allocations due to uncertainties over the status of the resource, Massachusetts allocated 12,000 metric tons of herring to IWP's over the past six months. What will the effect of these allocations be?

No one has any idea.

The amendment to Section 306 of the Act that I spoke of earlier is designed to begin to create an interstate management regime for resources like herring and menhaden which are subject to a proliferation of allocations to foreign processing vessels with nearly a complete absence of information upon which to begin to manage a fishery.

While we hold the ability to be flexible and move from fishery to fishery as nearly a sacred tenet, the Maine Sardine Industry's biggest concern over the state of the region's groundfish fishery is the impact that it is having on other fisheries often described as underutilized for want of a better term. As traditional stocks become stressed fishermen begin to look at other opportunities and herring is viewed as one of them.

We submit that IWP allocations in the herring business today are being made based on very weak or nonexistent scientific information.) The states do not even have an idea of what traditional harvest levels are outside of the sardine industry. This concerns us and we hope that the Subcommittee will work with us to address this disturbing situation.

On a final note, we hope that the Subcommittee will continue its efforts to ensure that the majority of Regional Council appointments in the United States go to individuals with strong ties to the commercial fishing industry. While I believe we have struck a balance between commercial and recreational interests within the New England Council, this is not the case everywhere.

In closing, we want to thank the Chairman and the Subcommittee for your continued support of this important food industry. We certainly have some distance to go to fully realize the promise of the FCMA but we believe we are on the right track.

We particularly appreciate your continued focus, Mr. Chairman, on the state of the environmental health of our ocean. Clearly, without a healthy ocean seafood consumers, fishermen and fish processors have much to lose. We must keep in mind that all three of these groups derive benefits from the management of our fisheries resources and from a clean ocean environment. We need to remind the federal government, particularly the Department of Commerce, that we are all working to manage an extraordinary food supply not, simply, fishermen.

Environmental health and food safety are equally as important as the development of fishery management plans. All of us with interests in both the fisheries and fisheries management must continue to commit the time, energy and dollars to the conservation and development of these very important resources and the environment they are found in. Long term commitment, not easy solutions, is what is needed.

Your continued leadership is of particular importance to our ability to meet this challenge and realize these goals.

Suggested Changes to the
Magnuson Fishery Conservation and Management Act

Section 306 (c)(2)

Present: (2) The Governor of a State may not grant permission for a foreign vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

Proposed: (2) The Governor of a State . . . landed in the State. When considering applications to process fish managed by a Marine Fisheries Commission, the Governor shall:

(A) Not grant permission for a foreign vessel to engage in fish processing if he determines that fish processors throughout the range of the stock involved have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State. This determination must take into account the processing capacity of foreign shore-based processors who regularly share a transboundary resource with domestic shore-based processors.

(B) Not grant permission for a foreign vessel to engage in fish processing unless his State has implemented all Marine Fisheries Commission management measures and regulations as appropriate to the stock involved.

(C) Not grant permission for a foreign vessel to engage in fish processing unless his State is making a significant scientific research commitment in support of the Marine Fisheries Commission's management and conservation goals for the species involved.

(D) Require that any Internal Waters fish processing venture which he approves have in place an adequate State-supported data collection system to ensure the accurate reporting of the quantity of fish harvested for delivery to each processing vessel involved. An adequate data collection system includes the employment of a full-time, independent observer on each foreign vessel involved.

Note: The following language developed by the Department of Commerce outlines other proposed changes for Section 306 (c)(2), concerning fisheries managed by a Regional Council. Legislative language should be developed to institute these changes and conform with any proposed changes to this section adopted for fisheries managed by a Marine Fisheries Commission.

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT,
EXTENSION OF AUTHORIZATION OF APPROPRIATIONS AND AMENDMENTS

The Magnuson Fishery Conservation and Management Act provides for the conservation and management of the nation's fishery resources through preparation and implementation of fishery management plans by Regional Fishery Management Councils. The management goal is to achieve and maintain the optimum yield from each fishery. The Fishery Management Councils monitor the fisheries and revise the plans as necessary. The Act also encourages the development of fisheries currently underutilized by U.S. fishermen.

The authorization will expire on September 30, 1989. The Department of Commerce recommends reauthorizing the Act for Fiscal Years 1990, 1991, and 1992 at such sums as may be necessary. The Department of Commerce also recommends further amendments to the Act as follows:

(d) Internal Waters Exception

P.L. 97-191 amended the Magnuson Act to allow the Governor of any state to approve a request for a vessel of a GIFA nation to process U.S.-harvested fish in the internal waters of that state after making a determination about the processing capacity within the state for fish landed in that state from that fishery. The absence of a requirement for the Governor to consult with the appropriate Council or NMFS prior to his decision has raised serious management concerns. The Governor need not consider any of the management measures set out in FMPs for a fishery in which the harvest occurs in the EEZ but processing of the harvest occurs in the internal waters. Similarly, the exception does not limit the amount that may be processed in internal waters and provides no requirement that the amount be reported.

The Department of Commerce proposes amending section 306(c) to require that the Governor of any state consult with the appropriate Council prior to granting permission for a foreign vessel to engage in fish processing in the internal waters of that state. Any foreign application should specify the species requested to be processed, and consultation should address the capacity for and utilization of that species by all domestic processors utilizing fish taken in that fishery, the portion of the domestic annual harvest of that species which may be made available to that vessel by the Governor, and reporting and logkeeping requirements by that foreign vessel.

HEARING ON THE REAUTHORIZATION
OF THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

REMARKS OF: HOWARD W. NICKERSON, EXECUTIVE DIRECTOR
OFFSHORE MARINERS ASSOCIATION
114 MACARTHUR DRIVE - SUITE 3
NEW BEDFORD, MASSACHUSETTS 02740

BEFORE THE: SUBCOMMITTEE ON FISHERIES AND WILDLIFE,
CONSERVATION AND ENVIRONMENT, MERCHANT MARINE AND
FISHERIES COMMITTEE, U.S. HOUSE OF REPRESENTATIVES

MAY 8, 1989 - GARDNER AUDITORIUM
STATE HOUSE - BOSTON, MASSACHUSETTS

CONGRESSMAN GERRY E. STUDDS
CHAIRMAN/PRESIDING


OFFSHORE MARINERS' ASSOC., INC.

114 MacArthur Drive
New Bedford, MA 02740
Tel. 990-1377

May 1, 1989

Congressman Gerry E. Studds
37 Cannon House Office Building
Washington, D.C. 20215

Subcommittee on Fisheries and Wildlife,
Conservation and Environment, Merchant
Marine and Fisheries Committee, U.S.
House of Representatives

Dear Chairman Studds:

We, of Offshore Mariners Association, do appreciate your invitation, to participate in the regional Congressional Subcommittee Hearing, at the Gardner Auditorium, State House, Boston, Massachusetts, Monday, May 8, 1989.

First, let me state for the record, that Offshore Mariners Association is in favor of reauthorization of the Studds-Magnuson Act, creating a United States 200-mile fishing limit law.

I, because of the many of our colleagues who desire to speak, on the issue of reauthorization, did prepare a five minute oral statement as suggested and I would like that attached to this statement as an addendum for the record or as you see fit as Chairman.

With every piece of legislation, there are parts that over a period of time that do not work out favorably, for those who were to be served or protected. Such is the case with this Act that is being considered today for comments and possible future reauthorization.

The main intent of the Act, as many fishermen and their organizations believed, was to remove the offshore foreign fleets and bring them under the control and supervision of our Government, should it be advisable to allow them limited access and other considerations at a future time.

However, the United States Government would also control access to the resources by our U.S. domestic fleet as well, in order to conserve and manage the resources, for the use of present and future generations of domestic fishermen and the U.S. consumer public. That was the main purpose of the Act in our opinion, but we gave little thought about how this difficult process was to be accomplished.

Thus far we have failed miserably here on the East Coast and particularly in New England to manage and conserve the resources, available for catching at the time the Act was signed into law.

I, was one of those, who suggested that no foreign power should have a treaty or the privilege of fishing the Atlantic during a moratorium period of no less than three years, with a preference for five years (which had been reduced from the original suggested five years minimum).

Foreign fishing efforts had already devastated many of the species that the Act was designed to protect. They were to be managed and conserved until they had recovered in the foreseeable future, we in industry thought.

This foreign fishing moratorium never came to pass. So be it, we could at least manage the resources available for management.

However, we here in the New England area through the New England Fishery Management Council principally have done a miserable job of trying to conserve and manage those resources we were entrusted with.

Our groundfish, as Chairman Studds has said so eloquently previously, "are at record low levels, half what they were a decade ago, less than a quarter of their levels during the 1960's and the trends for the future look worse. Georges Bank is literally going to the dogfish, which along with skates now make up almost half of the biomass on the Bank. Current management efforts are clearly not sufficient. There is nothing pleasant about these facts, but they cannot be denied and action to remedy them cannot be delayed".

Some are mistaken in thinking that the sea scallop industry is OK. That's an honest mistake because even though there appears to be a lot of pounds being landed and scientists say there is a good basis of small sea scallops for the future, we in the industry know differently.

We, have to look behind the landing poundage figures of sea scallops for reality. We have a lot more scallopers engaged in the fishery than before. Bigger vessels with much more power that can tow a lot of wire in the winter or stormy months. They don't have to stay dockside anymore and wait for perfect weather to leave for the fishing grounds, neither do they have to run for port when it is going to breeze up. They can fish real bad weather today if they have a mind too. Some of us don't like it, but you do what you have to do to make a trip when you are a fisherman.

There are a lot of smaller sea scallops being caught and landed than the scientists are aware of. These sea scallops could easily be the crops of 1991-1992 with proper effort control, conservation and management procedures. We have better electronics than we ever dreamed of a few years ago as well as damn good fishermen to understand and utilize the electronics to their maximum ability.

I don't want to take anything away from the scallopers of the 30's and 40's, who started this industry into the World status of New Bedford, as a sea scallop port that built a great productive industry, with what we had to work with. I am just stating the facts as they are today. Weather, and smaller vessels unable to go sea scalloping about four months out of the year was nature's way of conserving and managing the resource no matter how greedy we the fisherman were. I am just stating the facts on possible fishing effort today as I see and hear them through my personal contacts with our members and others engaged in commercial fishing, particularly sea

scalloping.

Many commercial fishing organizations are concerned at the manner in which Council appointees and later members are being chosen. There seems to be a tendency of late to go away from commercial fishermen or their organizations representatives from being chosen. It's getting to be which candidate in some instances can mount the best letter writing campaign of endorsements. Naturally, we think that this is unfair because those who are investing their lives, time and money in the commercial fisheries should naturally have a right to be represented in volume on the Councils, because after all it's their livelihood that needs conservation and resource management, for the best interests of all concerned, including the U.S. consumer public.

We also thought that Council memberships were going to be limited to only two terms in succession, subject of course to reappointment after an absence of one term. That does not seem to be the policy presently.

Another problem, considered a serious situation by some fishermen that I have talked to about reauthorization, is that if the State Directors band together on an issue that's a tremendous voting bloc, because a lot of people would ordinarily vote with them, as more knowledgeable than a layman or non fisherman. Likewise, the National Marine Fisheries, Regional Director has or should have tremendous clout if other Council members know how he is inclined to vote on a specific issue, particularly if he should desire to do some politicking ahead of time, which I don't believe occurs at least as far as I know to date, here in New England.

We have also noticed that on some tough issues, some individual States Council members have a tendency to vote as a bloc. This could be accidental or as how they feel a problem specifically affects their states fishermen. Problem is if this gets to be a habit, they could vote that way on issues that don't affect their states fishermen or resources to the detriment of others with a serious problem. Perhaps, we can never change the above situations, especially through legislation and I am not sure that we would want to, at least by legislation, but these thoughts have been brought to my attention by fisher people and I feel duty bound to put them on paper as part of the record.

Perhaps, these honest but candid thoughts would make some or some one consider the issues more seriously and vote their opinions, instead of just being one of the crowd. After all, your conscience should be the guide in tough situations and the Councils are going to have some really tough VOTES in the future I do believe, if we are really going to attempt to conserve and manage the resource which we thought the Act under consideration is all about, even if the VOTE is going to be unpopular when the Council member gets home and tries to explain the reason behind the VOTE, it must be done.

In Council appointments, no consideration is ever given to another appointee (making two) from a large diverse fishing port like New Bedford for instance, where there really is a big load for a single Council member to have to carry. When you stop to realize the large constituency of the groundfishermen, inshore as well as offshore, and the sea scallop fleet. With no disrespect, but even the Council sea scallop subcommittee chairman hails from New Hampshire and the groundfish chairman hails from Maine.

I do believe that once there was a sea scallop committee chairman from New Bedford for a few months. However, except for that one time, I don't believe a Council member from the Greater New Bedford Area ever chaired a committee.

That's surprising, when during the life of the Council, in dollar landed value this area (New Bedford) placed in the top ten of the U.S. as a fishing port. Since 1983 until 1988 New Bedford was #1 and #2 in 1988. When you consider yellowtail flounder and sea scallop poundage, we always were close to the top in total weight landed also. However, like Rodney Dangerfield has often said we just can't get any respect, no matter how many dollars or pounds we produce.

Over the years, I have been very fortunate in getting along well with the marine recreational fishermen, their organizations and their leaders. I realize their total economic importance to the communities where they are based and fish out of. I also realize that if we can negotiate amicably we are both better off. We, the commercial fishing industry are not out to deprive any one the right to fish or cut into their pleasure or income because after all that's all the commercial fishermen is looking for too... the right to fish and to make a decent living. However, we cannot allow the commercial fishermen to go out of business and I don't believe that the Congress or the Councils want that to happen either.

A problem that seems to exist on some Councils, however, due to the marine recreational organizations large membership, true commercial fishermen or their representatives are being frozen out of Council appointments. This is not fair and there has to be a mix of both perhaps, but we cannot exclude the commercial fisherman representation to satisfy the desire of large, powerful, letter writing organizations. This is taxation without representation.

The Seafood Producers Association and the Offshore Mariners Association have spent much time and money to attend Council Meetings for years to propose and support the elimination of the present count system and the system of unconscionable fines, plus confiscation of product which the Council and General Counsel support unwaveringly. Since the count went into effect it has not increased the resource, it has not increased or even maintained the former price dockside annual ranges due to weather, seasons, etc., as was customary for the last fifty years or more. More important perhaps, it has caused longer trips which does not increase product quality in some instances.

For the last three years since its incorporation, Offshore Mariners Association has been in the forefront, to propose and speak out, for effort controls as the only possible way to conserve and manage the sea scallop resource, to no avail.

We, from the New Bedford Area, know that effort controls, as we have pleaded for, work in managing and conserving the sea scallop resource, because that's what made the Port of New Bedford the "Sea Scallop Capital of the World".

We would like to have the opportunity through effort control to win that title back again. However, we can see no way to succeed to it, in the foreseeable future, if ever, under the present count system which has

spawned the present lack of conservation and management policies as dictated by The New England Fishery Management Council.

Respectfully,

Howard W. Nickerson

Howard W. Nickerson
Executive Director

Enclosure
HWN/oa

REMARKS OF: HOWARD W. NICKERSON, EXECUTIVE DIRECTOR
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MAY 8, 1989 - GARDNER AUDITORIUM
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CONGRESSMAN GERRY E. STUDDS
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Testimony before the
 Merchant Marine and Fisheries Ctte
 FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT SCOTTS
 on the
Fishery Conservation and Management Act Reauthorization
 8 May 1989

Good morning, Mr. Chairman, Members. I am Lucy Sloan, Washington Representative for the Point Judith Fishermen's Cooperative Association. We represent over 70 vessels and more than 200 fishermen fishing New England and the Mid-Atlantic.

In the interests of time, I shall not deal with all of the various amendments I understand are before you. The ones which I will raise are ones which we especially support, oppose, or wish to discuss further with you and your staffs--although as the discussion today evolves, there may well be additional thoughts I will want to add.

I'll start with the Council Chairmen's package of amendments--

- Section 2(b) PURPOSES--We seriously question the need for this amendment. The combination of the FCMA's extension of jurisdiction over anadromous species to the extents of their ranges and the Driftnet Act makes this redundant. While we recognize the concern West Coast fishermen have for these resources, those of us on the East Coast for whom the Japanese market is an increasingly important component in our further development are quite concerned that those opportunities not be forfeited for the salmon shuffle. The Chairmen merely assert, without specifics, that this would "strengthen our ability to eliminate the interception of US anadromous salmon and steelhead in waters beyond the US EEZ.... The language is needed in the Act so the Councils involved can request more aggressive action in solving the associated problems." Now, and why, really? The US Government and the concerned Councils have all they need in the existing legislation and policy.
- Section 102 EXCLUSION FOR HIGHLY MIGRATORY SPECIES--We continue to oppose putting tunas under the Act. International tuna management certainly has its problems. But after watching five Councils fight over swordfish management, we think it is difficult to see how tuna management could be improved by a similar process. It could also open the door further to making tuna a recreational-only fishery.

- Section 204(b)(10)(B) PERMITS FOR FOREIGN FISHING--This is one which clearly needs substantial discussion--especially in light of the Department of Commerce proposal to make fees "reasonable." Given the difficulties fees are presenting for certain East Coast joint ventures and the limits that they may, in fact, present, we are concerned that they could rule out joint ventures. How, for example, does one evaluate what may be "reasonable" in assessing lost opportunity costs? While our vessels may or may not participate in these joint ventures, we can see that having these opportunities may mean less competition in other fisheries or markets.
- Section 302(j) PROCEDURAL MATTERS--We support, as we have for some time, taking the Councils out from under the National Environmental Policy Act (NEPA). Fishery management plans and amendments, for a variety of reasons--including the habitat amendment to the Act--are increasingly concerned with environmental issues. NEPA is only additional, unnecessary paperwork.
- Section 302(j)(3)(A)(ii) PROCEDURAL MATTERS--We support this amended language as regards the limited reasons for which a Council may close any meeting and the need to publish that fact. Unfortunately, too many in the fishing industry already think that too many Council actions are intentionally or unintentionally obscure. It is, therefore, vitally important that the Councils minimize closed meetings and publish well in advance the reasons and needs for any closures.
- Section 304 ACTION BY THE SECRETARY--We support this new language calling for a clearly-defined timeframe in which the Secretary must act on a Council's regulatory amendment. The most recent regulatory amendments with which we're familiar were both industry initiatives which arose from Coop fishermen's concerns for juveniles in certain areas. We are now working on a framework amendment for the groundfish plan to deal with these sorts of problems, but we know there will be other circumstances where timely regulatory amendments will be essential for additional conservation.
- Section 303(b) CONTENTS OF FISHERY MANAGEMENT PLANS and 304(d) ESTABLISHMENT OF FEES--We are extremely cautious about user fees and the purposes to which these might be put. If there were to be user fees, as this proposed amendment calls for, then we think it is imperative, as the Council Chairmen's document says, that they "should be dedicated to the purpose for which they were collected." But one of the things which concerns us is that dedicated fees are frequently difficult to achieve, even on a large scale and for a single purpose. What would happen if several Councils were to have more than one fund, each dedicated to the specifics of a different management plan? First the politics, then the logistics...formidable! Because we are concerned about not enough funding available for research and enforcement, we would like to discuss this further, but we do recognize the problems.
 --However, we emphatically do not support any fees for programs designed to establish property rights, economic rent, or limited access in any fishery, as per Mr. Young's bill, HR 1554, Section 2(b)(2). If we are to consider user fees, a provision like this one of Mr. Young's is essential! (On that provision,

we do continue to have reservations as regards the reasons for and conditions under which observers may be placed on our vessels.)

Among the reasons we do not support limited entry, limited access, limited exit--whatever--is that we think it is economically inefficient in a world in which monies for fisheries research and management are getting increasingly scarce. Not only does limited entry risk violating the fourth National Standard (to say nothing of Standards 1, 5, 6, and 7), but it seems fairly clear that the costs, economic and social, necessary to reduce fishing effort and then to administer and to enforce the limited entry program will be unrealistically high. Certainly, there is a good chance these costs will be higher than a more equitable approach of rational regulations based on current data and real enforcement.

If one does not reduce fishing effort at the beginning of a program, one is likely risking not only National Standards violations, but also increasing fishing effort if fishermen in a fishery which may be fully utilized or declining are not able to go into other fisheries because the other fisheries are also under limited entry.

It is all well and good to talk about limiting access to a fishery to conserve the resource. Many are genuinely concerned about conservation. But it is also well to recognize that among many in the industry who support limited entry, the agenda may also include --legitimate--concern for protecting one's own particular investment in that fishery as well.

We think, therefore, that rather than arbitrary limitations on who may or may not fish in a given fishery, enforced regulations which apply to any entrant, actual or potential, are certainly more nearly equitable and economical. These kinds of regulations include, but clearly need not be limited to, closed areas, closed seasons, gear regulations, and minimum sizes. And if the current catch per unit effort and landing data is available, rational people will be much less likely to make new investments in a fully utilized or declining fishery. Fools should not be protected and cannot be legislated against.

That means we must have enforcement and current data. We recognize the financial constraints, which is why we are willing to discuss fees under certain circumstances and for certain equitable programs. But we will continue to oppose limited entry in its various guises, and our concerns about it obviously go well beyond the very brief statements I have made about it in this testimony.

For another perspective, with points to which we are sympathetic, I have attached to my testimony an August 1984 article by Chris Blackburn, now director of the Alaska Groundfish Data Bank in Kodiak. Her arguments are as relevant now as they were then.

Next, I'd like to look at the Department of Commerce draft--

- "Reasonable" fees I've discussed under the Chairmen's amendment on changes in fees for foreign fishing. But I will reiterate that we do not wish to see the joint venture option priced out of the market.

In some cases, it would actually appear that this much-touted, so-called Americanization is really going back to second-class citizenship for certain fishermen. When one re-reads the legislative history of the joint venture amendment, it becomes clear once again that it was not the Cttee's intent to require US fishermen to accept terms and conditions which the US processing industry might unilaterally establish.

- Internal waters processing does not require Council involvement beyond that which presently exists because all State Directors sit on the Council in their geographic area of concern. These proposed amendments are thinly disguised attempts to kill, rather than work with, ventures which provide alternative markets for fishermen. Another variation on fishermen as second-class citizens. If there were a resource problem, surely the Governor would know through his State Director. If it were a market problem in another state, but no resource problem, I see no reason why the Governor receiving the IWP application should deny the fishermen of his state an alternative market.
- Commerce's proposed reauthorization of the FCMA would be comical if it were not so sad. At least it is consistent. NMFS did not want the 200-mile law in 1973 nor in 1976. And it didn't--and, given the Calio Report and the revised 601/602 National Standard Guidelines--still doesn't, want the Councils. Or, at least, if it must have them, NMFS wants the Councils purely advisory, as NMFS GC Herb Blatt insisted Congress intended--at a MAFAC SCttee meeting less than two weeks after the bill became law. The battle was joined then, and it's been going on ever since. --And this, mind you, from an outfit which wasn't exactly doing a spectacular job itself managing fisheries before 200 miles.

I think perhaps the most recent manifestation of the problems which at least some of us continue to have with NMFS as regards the Councils is the revised 601/602 National Standard Guidelines. What's disturbing about these revisions is that clearly they owe alot to the Calio Blue Ribbon Panel Report--a document with which both Councils and industry had several problems.

As I re-read the proposed rule (which I'm told is the most recent version) on 601: Regional Fishery Management Councils and 602: Guidelines for Fishery Management Plans, I thanked you again for having passed the amendment to Section 301(b) which said that the advisory guidelines shall not have the force and effect of law. That's a help, even though NMFS still has all the lawyers. (I continue to be sad for the Councils and the industry that we have not, at least yet, been able to prevail on the point of a Council's right to independent counsel.)

This leads into a number of issues which, although I've not seen them raised as FCMA amendments, I would like to discuss with you--

- Overfishing is undefined in the law--which is as it should be. As you recall, Mr. Chairman, discussions of what optimum really meant went on even into the Conference Cttee. But what I recall

was a willingness, even a eagerness, to work with optimum, because clearly MSY and its corollaries were not proving satisfactory.

In his March letter to Dick Schaefer on 602, New England Council Chairman David Borden refers to a definition and a set of guidelines based on MSY as approaching voodoo biology. I would like to submit that letter for the record, if I may, Mr. Chairman, for I think in it Mr. Borden raises questions I also have about the validity and desirability of a revised definition of optimum and the concepts of threshold and SAFE (Stock Assessment and Fishery Evaluation) document. These, taken together, may be read, without a great deal of imagination, as triangulation with which the fence the Councils in. They are not an improvement, either for fisheries management generally or for Councils' autonomy, over the previous versions.

Optimum is flexible, even subjective. But allows the Council more realistically to assess and to balance factors which affect a fishery than does an approach more specifically constrained by absolute numbers. This is especially true--and valuable--when we all know that the numbers are shaky; that there is disagreement among the scientists; between NMFS and the Council; among fishermen; and between fishermen and managers.

One of the major problems of having fish in a science-dominated agency--NOAA Fisheries, as it's now called--is that, particularly in a crunch, fish are the constituents and fishermen are unwelcome perturbations in the system. Is that imbalance what Congress really intended?

The bottom line is that fishermen do not agree that the bases for regulations are valid, they will find ways around them and very few of them will be caught. Our groundfish plan is an example. Some charge that it is not working. Parts of it aren't. But we think we may be beginning to see parts of it that are. Fishermen are reporting seeing enormous amounts of juvenile and sublegal yellowtails large amounts of sublegal cod in Southern New England. From Northern New England, fishermen are apparently reporting more dab.

Bob Smith, a member of the Coop and of the New England Council, points out that just as the groundfish plan may be beginning to work, so may fishermen be beginning to realize the value of rational management. And rational here does not mean arbitrarily by the numbers when fishermen's own information may contradict those numbers.

Jake Dykstra and I always said that we thought it would take at least ten years to get the bugs out of the system. Sometimes I wonder if we ever will. I am not, however, and unlike some, prepared to call the system a failure. I am sure, after talking with fishermen about how reasonable they find management, that the kinds of creeping back toward numerical nonsense the torqued proposed rule represents will hinder, not help, productive exchanges between fishermen who are on the grounds and scientists who increasingly aren't.

And having NMFS try to compensate for its lack of numbers with stricter guidelines about what it has not got is counterproductive in our mutual efforts to do the best jobs of management we can with what we've got.

- Joint Council management of a resource when either the resource base or the landings are not clearly the province of one Council continues to be a problem.

We, the Coop, are acutely aware of what this may mean. Based in Rhode Island, we look to the New England Council. But our boats as frequently turn south as east, west, or north. Squid and butterfish, both under the management of the Mid-Atlantic Council, are very important species for us. We are constantly reminded, therefore, that in early discussions of how the Councils might arrange themselves, there was the proposal for one Council, Maine to Cape Hatteras. Given the overlapping jurisdictions of the New England and Mid-Atlantic Councils, I am not so sure but what we didn't further complicate an already complicated process.

So that we may discuss this further, I would like to submit for the record a paper which David Borden and Guy Marchesseault of the New England Council wrote, "Alternative Models of Council Participation in Establish Policies and Plans for Shared Fisheries Resources." While I do not want to take the Ctte's time to discuss it today, I do think, that especially given the ever-scarcer money, it would be helpful to reexamine what the possibilities might be.

- The Marine Research Act of 1989, which Congressman Ernenan and Senator Mitchell have re-introduced, might also prove to be very helpful to us in coordinating what has been some very uncoordinated research, the combinations of which could benefit the Councils. I do not think that we should, with fiscal austerity, reinvent the wheel, but at the moment we really have no mechanism of this kind for regional coordination. Periodically, Sea Grant or another group may take a stab at it, but it is neither sustained nor universal, and I think we do need that long-term coordination.
- Fish exports and trade issues are becoming increasingly important to the Coop. Our significant growth markets are not domestic, but are, rather, Japan and the European Community. The Coop is currently sending fresh and frozen product to Japan (butterfish, fluke, tuna, monkfish livers), and we are looking into sending both squid and mackerel to Japan as well. The European Community is important to us for squid, and we are also looking at other species there.

For these reasons, we particularly appreciate that in the Ctte's presentation to the Appropriations Ctte on the NMFS budget that you spoke up strongly in support of better fisheries trade coordination in NOAA under the Deputy Assistant Secretary for International Interests. If we can follow that through and ensure that it happens, I think that will be a tremendous help to us and to others, including New England members of the US Seafood Exporters Association.

- Canada and fisheries management issues continue to be a problem. We understand that it may be possible to look again at the possibility of a technical conference between the US and Canada on our scientific and economic ideas, and to put together an agreed-upon lexicon of related terms which might help serve as reference in the event of US-Canada government-to-government discussion at some later point.

The problem remains for us, of course, that Canada has no analogue to our Council system for management. And particularly given our problems with NMFS persistent insistence that our groundfish plan isn't working, we would be disinclined indeed to have NMFS preempt the Council in any kind of joint discussion simply because the Canadians have not got something like the Council system. Some of us have been working on that disconnect and how to try to deal with it since 1976. And since we're not looking to abandon the Council, we're still not sure how we're going to resolve that problem. It would be going backwards to 1978--1979 not to have the Council substantially involved in the discussions--should those occur.

Thank you, Mr. Chairman, Members, for coming to New England. We appreciate the opportunity to talk with you here, and we look forward to working with you during the reauthorization process.

Thank you!

Alaska Fishery News, August 1984



Chris Blackburn

WATERFRONT

It's Better to be Flexible Than Stable

When politicians or fisheries agency people talk about the fishing industry, words like "viable," "stable," and "reasonable economic return" have a tendency to pop up like dandelions in a fresh mowed lawn.

The problem with jargon words is that they sound meaningful, but often have little to do with the topic under discussion and tend to restrict the users' thought processes.

While *viable*, *stable* and *reasonable economic return* all seem to be perfectly desirable concepts, they don't have a whole lot to do with the fishing industry. "Flexibility" might be a better word to cultivate in today's discussions of the industry.

The problem with the word *stable* is that it doesn't describe the actual conditions in the fishing industry. Stocks fluctuate, demand fluctuates, interest rates fluctuate, prices fluctuate. There's nothing stable about the fishing industry—except other industry for that matter.

The history of the industry is the history of adapting to change and the challenge has always been to remain flexible enough to be able to adapt.

Viable rolls off the tongue nicely, but it doesn't mean much beyond alive and kicking. The fishing industry is definitely viable. Whether it can remain viable depends on how flexible it is.

Reasonable economic return is a phrase that, once again, sounds admirable, but unless it is followed by an explanation of what kind of investment should produce a reasonable economic return, the whole concept is meaningless.

There are processors and fishermen who try to plan their operations to minimize overhead and remain flexible enough to survive fluctuations in the economics of the industry, and there are those who speculate heavily during boom times. There are also those who invest conservatively, but resist changing to meet new conditions. The question is, do all three groups deserve to be guaranteed a reasonable economic return?

The fishing industry is faced with the same problems as any small business—some will succeed, a lot won't—and as any highly speculative venture—some will make fortunes and more will lose fortunes.

The boom years of the Alaska shellfish fisheries created a speculative industry more fun than the commodities market. When the boom ended, speculators who went far broke ended up broke. The same thing happened in the commodities market and stock markets long ago.

The shellfish boom encouraged

investment that could only be recovered in a high volume, high priced fishery. Instead of building flexibility, the boom years encouraged rigidity.

As long-time fishermen often say, boom years are the worst thing that could happen to the fishing industry. High profits attract greater participation; processing capacity increases to handle greater volumes; seasons become shorter; fishermen upgrade to catch more faster.

The booming segment of the industry loses flexibility; the boom collapses and it's disastrous.

It happened in crab. It happened in shrimp. It's happening in halibut. It's even happening in joint ventures.

In all cases the industry sacrificed its flexibility in exchange for short term gains. The fishing industry is not alone in this tendency to go for the short term and find itself caught short in the long term. Much has been written about the long term disaster of short term profit taking in all major industries.

Most efforts to create short term stability also create long term rigidity. Salmon fishermen in many parts of the state found that the regulations limiting the length of their vessels made it impossible for them to participate in offshore fisheries like black cod or groundfish.

Limited entry also reduces flexibility, both by making it more expensive to enter a limited fishery and locking boats out of the limited fishery. Profits are reduced by permit payments.

Whether the trade-off of decreased flexibility in exchange for reduced competition is worthwhile is a question that is still being argued.

Even the Fisheries Conservation and Management Act's provision that fish not harvested by U.S. fishermen be allocated to foreign fleets reduces the industry's flexibility.

Though it might be advantageous to manage certain stocks to assure volume catches over time or a high percentage of large fish, the FCMA prohibits stockpiling.

The ultimate goal of fisheries management policies should be to assure the maximum flexibility for the industry so that fishermen and processors can respond to natural fluctuations and maintain some semblance of economic balance.

Every regulation that increases rigidity or reduces flexibility assures that the fishing industry will eventually face new problems and require new regulations that will further reduce flexibility.

The goal should be how flexible can this industry be, not how stable. □